

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF AND APPENDIX FOR APPELLANTS

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 8594

133

LOU ORENBERG ET AL,

Appellants,

vs.

MADELINE THECKER ET AL,

Appellees.

Appeal from the District Court of the
United States for the District of Columbia

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

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UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA

No. 8594

LOU ORENBURG
AND
RITA HOMES NIEFELD,
Appellants,
vs.

MADELINE THECKER,
AND
GEORGE W. THECKER,
Appellees.

Appeal from the District Court of the United States
for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a judgment on a verdict rendered

in the District Court of the United States for the District of Columbia. The action was one for damages as the result of a collision between an automobile owned by the appellant, Orenberg, and operated by the appellant, Niefeld, and the appellee, Madeline Thecker. Appellants filed a motion for a new trial supported by affidavits indicating misconduct on the part of certain jurors, and the said motion for new trial was denied. (Appellants' App. 45).

Jurisdiction is found in Title 18, Chapter 3, Sections 41, 43 and 44, page 161, 1929 Code for the District of Columbia; Title 18, Chapter 2, Section 26, page 159, 1929 Code for the District of Columbia; Title 21, Chapter 1, Section 12, page 301, 1929 Code for the District of Columbia.

STATEMENT OF CASE

Appellee, Madeline Thecker, was injured at the intersection of 16th and K Streets, N. W., on the 24th day of April, 1939, when an automobile owned by appellant, Orenberg, and operated by appellant, Niefeld, collided with her near the Northeast corner of the intersection. Madeline Thecker testified that just before she left the curb the traffic control light was green for pedestrians going South from the Northeast corner to the safety island from which she intended to board a bus, and was red against West bound traffic, and that when she had covered about one-half of the distance from the curb to the safety island, she was struck and remembered nothing thereafter.

(Appellants' App. 6).

Madeline Thecker's testimony was supported by the testimony of certain witnesses, the principal one of whom was Donald Russell Shepherd, a taxi-driver, who claimed

to have been driving his cab a short distance to the rear of appellant's automobile. Shepherd testified that he had turned into K Street from 15th Street, and that when appellants' car was close to the pedestrians' cross-walk the appellee, Madeline Thecker, stepped off the curb while the light was red against West bound traffic, but when appellee was struck the light had changed to green. (Appellants' App. Pages 17-25).

Appellant, Rita Homes Niefeld, testified that the traffic control light was green for West bound traffic, and that she was proceeding at a reasonable rate of speed when appellee, Madeline Thecker, hurried out into the street in front of her automobile and so close to it that she was unable to stop before striking said appellee. (Appellants' App. Pages 28-30). In this contention the said appellant was supported by the testimony of other witnesses.

After the jury returned a verdict in favor of appellees, a motion for a new trial was filed, supported by affidavits, showing that two jurors remained silent when questioned on the voir dire concerning claims for personal injuries which any of the panel had ever had for personal injuries either arising out of an automobile accident, or any other kind of an accident, and that two other jurors, during the course of the trial went to the scene of the accident and made certain observations, inspections and experiments and one of them reported what he had observed to the other jurors, and urged that the testimony of one of the witnesses called on behalf of the appellees be thrown out because of the conclusion which he had reached as the result of his observations at the scene of the accident. (Appellants' App. Pages 36-45). No affidavits of the jurors charged with misconduct were filed in denial of the charges, although the two jurors who failed to answer on the voir dire filed explanatory affidavits.

STATEMENT OF POINTS

The District Court erred in overruling appellants' motion to set aside the judgment and verdict and grant a new trial.

SUMMARY OF ARGUMENT

1. Unauthorized visits to the scene of an accident by some of the jurors, out of the presence of the others, and without permission of the Court, frequently results in a verdict based upon impressions and conclusions of jurors who undertake to make of themselves witnesses for one of the parties. Such jurors ignore the instructions given by the Court that they should reach their verdict on the evidence produced by the testimony of witnesses in open Court, and permit their judgments to be influenced by things which they may observe and experiments which they may make at the scene under conditions which might be entirely different from those which existed at the time of the accident. To permit a verdict so based to stand is to deny to a party a fair trial to which he is entitled under the law.
2. The right to challenge jurors peremptorily is a valuable and useful one, designed to enable the parties to secure a fair trial by an impartial and unbiased jury. When false information is given in answer to the questions propounded on the voir dire, even though the juror does not act in bad faith in giving this information by answer or silence, the parties are misled and a new trial should follow as a matter of law.

3. The affidavits of jurors may be received to show misconduct on the part of other jurors when such misconduct is with reference to something that does not essentially inhere in the verdict but results in extraneous matters that might influence the juror, or jurors, being brought to their attention.
4. Although the allowance or refusal of a new trial is considered in the Federal Courts to rest in the sound discretion of the trial Court, the trial Justice cannot in the exercise of that discretion, ignore the undisputed facts and well established principles of law, and if he does so there is an abuse of discretion which should be corrected by the Appellate Court.

ARGUMENT

1. An unauthorized visit to scene of accident by juror, during the trial, and making observations, inspections and experiments there is such misconduct as to compel a new trial.

The effect of unauthorized visits of jurors to the scene of accident for the purpose of making inspections, observations and experiments has been treated of in many cases in both the Federal and State Courts, and the overwhelming weight of authority holds that such misconduct demands a new trial. The logic of the cases so holding is apparent. Issues are supposed to be decided on the basis of facts produced in open Court by the testimony of witnesses who are subjected to cross-examination. The jurors are supposed to weigh the testimony of the witnesses in the scales of their judgment without having the scales

tilted one way or the other by extraneous matters, or impressions received outside of the Court room either by unsworn statements of others who might approach them, or by their own investigation at the scene during the trial. Their investigation, inspection or experiments, unknown to the parties to the case, or their counsel, and the impressions made upon them, have not been subjected to the search light of cross-examination. To permit jurors to so conduct themselves as to decide an issue on the basis of what they saw and did at the scene during the progress of the trial, instead of on the testimony of the witnesses as to what they saw and did at the scene at the time of the accident, is to make farcical trial by jury.

In *Skinner vs. Cron*, 206 Iowa, 338, 220 N. W. 341 (1928), one or more of the jurors, without order, direction or leave of Court, visited the scene of the collision, viewed the premises out of which a witness was supposed to have been looking at the time of the collision, and made estimates as to the ability of the witness to observe the collision and the things to which she testified. In treating of this misconduct on the part of the juror, the Court said, at page 342:

“But in this case, the environments at the intersection in question, and the fact as to whether or not the witnesses, particularly Mrs. Schrader, who testified for the defendant, could have seen what she testified that she did see, were quite material in the determination of the controversy between the plaintiff and the defendant. In this state of the record it cannot be said that the view of the premises by the jurors is not prejudicial. A juror who visits the scene of the collision with the purpose in mind of ascertaining how the collision occurred, and whether the witnesses could have seen what they

have testified they did see, cannot truthfully say how much he may or may not have been influenced by what he saw at the scene." (Citing cases) *****

"Moreover, it was an abuse of discretion on the part of the trial Court not to receive the offered testimony. We have held that where jurors consider matters not in evidence, and not produced on the trial, which it is reasonably probable influenced the verdict, it is such misconduct as to require a new trial."

In *De Porte vs. State Furniture Company*, 129 Neb. 282, 261 N. W. 419, it was held that the conduct of a juror in going to the scene of an accident and making observations at defendant's store with reference to the canopy and the forming of ice from dripping water was prejudicial misconduct which required a new trial.

In *Losey vs. Creamer*, 45 Ohio App. 356, 187 N. E. 197, three of the jurors who returned a verdict for the defendant made an unauthorized visit to a scene of an automobile collision during the progress of the trial and conversed regarding the place and the collision. It was held that the plaintiff was entitled to a new trial.

In *Schneider vs. Moe*, 151 Oregon 353, 50 Pac. (2nd) 577, a pedestrian's action for injury received when struck by an automobile, a juror viewed the scene of the accident during the trial and told the jury that the witness could not have seen the accident if at the place he testified. The refusal of the trial Court to grant a new trial was held an abuse of discretion.

In *City of Amarillo, Texas, vs. Emery, et al.*, 69 Fed. (2nd) 626, it was held that the refusal of the trial Court to

consider affidavit of some jurors, showing that others, in determining value of property had viewed the property and considered unsworn testimony, was reversible error, and the Court said:

“There is no doubt that if any of the jurors discussed the testimony of witnesses with them, out of Court, or went about the neighborhood collecting unsworn testimony as to the value of the property, such actions would be gross misconduct vitiating the verdict.”

See also *Hoyler vs. City of Longview, Texas*, 129 S. W. (2nd) 416.

The District Court of the United States for the District of Columbia, has long recognized and enforced the rule for which appellants contend. In *Keeler vs. Thomas J. Fisher and Company, Inc.*, Civil Action No. 3632, Judge Proctor set aside a verdict in favor of the defendant and granted plaintiff a new trial, because the Foreman of the jury, during the trial, had visited the scene of the accident and reported his observations to the other jurors, when they were deliberating on their verdict. The Foreman had gone to the apartment house where the accident had happened to play cards with some friends whom he had often visited before, and when going into and leaving the apartment on his visit during the trial, he observed the lights in the lobby, and on the steps where the accident happened, and gave his impressions to the other jurors. He had no intention of visiting the apartment house during the trial and only went there because his friends who lived in one of the apartments had invited him over. In that case counsel for Appellant, Orenberg, appeared for

the defendant, and one of counsel for the appellee appeared for the plaintiff.

In the light of the above cited cases, let us consider the facts of this case. The plaintiff testified that she was standing at the Northeast corner of 16th and K Streets, facing South and she went to cross to the safety island to board a bus marked "Petworth". When asked how close the bus was to 16th Street she stated, "I could not judge it in the amount of feet, but it was standing; as the bus was standing and waiting for its turn—I could not gauge the distance." She then testified that as she stepped off the curb she glanced at the green traffic light on the Southwest corner, the traffic was stopped East and West, she put her foot off the curb, gave another glance at the green light and made for the bus and had gotten about midway, and she remembered no more until she was in Emergency Hospital (Appellants' App. Pages 15-16.

Beverly B. Burton, called as a witness for the appellee, testified that he was on the Southeast corner facing North and intending to cross K Street; that the light on the Northeast corner was red, and he stopped; that he did not see the automobile, or Mrs. Thecker, until the collision took place, but that he saw an automobile crossing the intersection going in a Westerly direction at the time appellant's automobile struck the appellee, Mrs. Thecker, and he noticed traffic going across the intersection in a Westerly direction before she was struck. (Appellants' App. Pages 25-27).

Donald Russell Shepherd, also called as a witness by the appellee, testified that he was operating his taxicab, that he had come South on 15th Street, and turned into K, and at the time of the accident his taxi was a short distance, thirty or forty feet back of appellant's automobile; that there were parked automobiles running up to a point close to the cross-walk at 16th Street; that he noticed the appel-

lee, Madeline Thecker, step off the curb just before the light on the Northwest corner of 16th and K Streets turned from red to green, and that when she was struck the light was green. (Appellants' App. Pages 17-25).

In addition to the testimony of the witnesses mentioned there was testimony of other witnesses for both the appellants and appellee as to the condition of the lights, etc., at the time of the collision. Their testimony is set out in full in the transcript of record. The testimony, or a portion of the testimony, of the witnesses, which is considered essential to the points raised on this appeal will be found in Appellants' Appendix.

Franklin Floyd Richardson, a member of the United States Navy, testified that he was a bus operator of the Capital Transit Company, at the time of the accident, and that his bus was standing at the intersection of 16th and K Streets, and he was looking for an opportunity to make a turn through West bound traffic in order to go North on 16th Street; that the traffic control light was green for West bound traffic, and West bound traffic was moving over the intersection of 16th Street and K when the appellee, Madeline Thecker, was struck by appellant's automobile. (Appellants' App. Pages 30-32).

William B. Hampton, assistant engineer connected with the office of the Engineer of Traffic for the District of Columbia, testified that on the date of the accident the traffic control lights were so synchronized, that if the light for West bound traffic at the intersection of 15th Street and K Street was red the light for West bound traffic at 16th and K Street would be green, with the exception of five seconds after the lights changed at 15th Street. In other words, his testimony was, that when the light for West bound traffic at 15th and K Streets changed to red the light for West bound traffic at 16th and K Streets would turn green five seconds later. By his testimony it

was established that when the light was red for West bound traffic at 15th and K Streets, it was green for South bound traffic on 15th Street, and that a person coming South on 15th Street could make a right hand turn into K, when the light was green for South bound traffic. (Appellants' App. Pages 35-36).

Emmett J. Motley, connected with the Engineering Department of the District of Columbia, testified that the distance from the West curb of 15th Street, to the East curb of 16th Street, or K Street, was $497\frac{1}{2}$ feet, the width of 16th Street from curb to curb was 48.9 feet, and the distance from the West curb line of 16th to the East curb line of 17th Street was $507\frac{1}{2}$ feet. Those distances applied at the date of the accident. (Appellants' App. Page 33).

The summary of the testimony of the above witnesses indicated very strongly that the appellee, Madeline Thecker, and the taxi-driver, Shepherd, were not giving the real facts when they testified as they did with reference to the color of the traffic control lights just before the accident. Shepherd testified that appellants' car was travelling somewhere between twenty and thirty miles per hour, but he did not know exactly. He had turned into K Street by making a right hand turn from 15th Street, and was gaining on appellants' car at the time the accident happened. He estimated his own speed at between twenty and thirty miles per hour. Shepherd could not make the turn into K Street on 15th Street unless the light for South bound traffic at 15th Street was green, and, of course, if the appellants' car was only a short distance ahead it must have crossed the intersection at 15th and K Streets just before the light changed. As his testimony was that the light at 16th Street and K Street was red for West bound traffic, when Mrs. Thecker stepped from curb and was green when she was struck, and at that time he was only thirty or forty feet

back of appellants' car, it is interesting to estimate the speed at which both of these cars would have to be traveling in order to reach their respective positions at the time of the accident, if Shepherd was telling the truth as to the condition of the traffic lights. The distance from the West curb of 15th Street to the East curb of 16th Street was 497 1/2 feet. An automobile traveling thirty miles an hour will travel forty-five feet in a second. If Shepherd turned into K Street, at the very instant that the light changed so as to permit him to make a right hand turn, and was traveling thirty miles an hour he would only travel 225 feet in the five seconds, which Mr. Motley testified would elapse between the change of the light at 15th and K and the change of the light at 16th and K. In other words, the light at 16th and K Streets would have changed to green for West bound traffic before Shepherd's cab had gone half way up the block, and as the appellants' car was a very short distance ahead of his, it would have changed when that car was at least 200 or 250 feet from 16th Street. In order for Shepherd to have reached a position about 40 feet from the cross-walk at the time of the accident when the light on the Northwest corner of 16th and K Streets changed, as he testified, from red to green, he would have had to be traveling at a speed of at least 66 miles an hour, and appellants' car would have been going at the same speed or slightly less than that. The testimony, however, showed that appellants' car was stopped in about six feet from the time of the accident. When Shepherd's improbable and unbelievable testimony is considered in the light of the testimony of the other witnesses, and particularly the witness, Richardson, it can easily be seen that the action of the two jurors in going to the scene of the accident and making observations and experiments was such prejudicial misconduct as to demand a new trial. One of the outstanding disinterested witnesses, was the Capital Transit bus operator, Franklin

Floyd Richardson, and as appears from the affidavits of the jurors, Aires, Beese, and Rudden, the juror Adkins, stated that he had gone by the scene of the accident every day since the trial of the case started and had checked or watched the manner in which buses would turn to the right off K Street for the purpose of going North on 16th Street, and because of what he observed at the scene with reference to the manner in which those buses, operated by other bus drivers, undertook to make the turn, he argued that none of them stopped in the position in which Richardson said he stopped his bus on the day of the accident, and that they should, therefore, throw out the testimony of Richardson. The affidavit of the juror, Beese, set forth that another juror, Mildred G. McMillan, stated in the jury room that on Sunday, March 7th, while the trial was still pending, she had gone to the scene of the accident in her automobile and had travelled around the block and made a test to see how long it would take her to get from 15th Street to 16th Street, and what the condition of the lights would be at 16th Street when she reached that point while going West on K. (Appellants' App. Pages 38-41). What the conditions were under which this juror made her test when she drove around the block on Sunday, how and when she made the light at 15th Street, how fast she drove, or any other details of the test are not known. That she was undoubtedly influenced by the test she made is shown by the fact that according to the affidavits filed by appellees in support of their opposition to the motion for a new trial, she had at all times voted for the appellees.

That the jurors, Adkins and McMillan, did the things charged, is shown by the fact that although counsel for the appellees filed the affidavits of the jurors, Bigley and Rinehart, in explanation of their failure to answer certain questions on the voir dire, they did not file affidavits of the jurors, Adkins and McMillan, in denial of the misconduct

charged to them, nor did they ask the Court to call the said jurors and interrogate them concerning the alleged misconduct.

2. A verdict should be set aside on motion when it appears that some of the jurors gave false answers or concealed material information by silence when questioned on the voir dire.

Although this Court has not heretofore passed upon this question, the law has been clearly established for a great many years in this jurisdiction by the decisions of the District Court of the United States for the District of Columbia, that where a juror gives a false answer or no answer to a pertinent question addressed to him on a voir dire examination a new trial should be granted. The voir dire examination is designed not only to assist the Court in passing upon the juror's qualifications but also to enable counsel to intelligently exercise his right to peremptorily challenge. The asking of the questions on the voir dire examination by counsel for the appellants, (Appellants' App. Page 42), was for the purpose of eliciting information that would enable him to determine what jurors were likely to be fair and unbiased, uninfluenced by past experiences with reference to personal injury claims in which they had been interested. The questions were not idly asked, and they were pertinent to enable counsel to protect the interest of his clients by taking every precaution to secure a fair and impartial jury. Counsel had knowledge of the fact that the witness, Richardson, the driver of the Capital Transit bus, would be called as a witness on behalf of appellants, and it is not likely that he would have accepted the jurors, Bigley and Rinehart, and failed to strike their names, if he had been advised by answers to the questions propounded that Bigley had had a claim against

the Capital Transit for personal injuries which was settled out of Court, and had complained that the operator of the bus on which he was injured had been rude to him, and that Rinehart had presented a claim against the Capital Transit Company for injuries received on a street car, and had thereafter settled the claim. The experiences of these two jurors with the Capital Transit Company, the assertion of claims on their part, with reference to both personal injury and the rudeness of the operator of the bus would very likely make them poor jurors insofar as the appellants were concerned, particularly with reference to the acceptance of the truth of the testimony of the witness, Richardson. The questions were asked in a strong tone of voice and clearly heard and understood by each of the jurors. The explanatory affidavits of the two jurors, Bigley and Rinehart do not carry conviction, for it is difficult to understand how two men of ordinary intelligence could fail to understand the meaning of the questions in view of the fact that other jurors gave answers which removed all doubt as to their meaning.

In *Drury vs. Franke*, 247 Kentucky 758, 57 S. W. (2nd) 969, 88 A. L. R., 917, it appeared that four of the jurors, who had been involved in an automobile accident, remained silent when the question was propounded on the *voir dire* as to whether any of them had been in any way involved in an automobile collision, or had any litigation pending against them which grew out of an automobile collision. The Court said:

“You cannot know what the attitude of these jurors, especially juror, Howard, was in the jury room. If it were antagonistic to the cases of the plaintiffs, we cannot speculate as to what effect it had on the verdicts that were returned. Although Howard did

not agree to or sign the verdict, his attitude may have influenced the jurors who made the verdicts to fix the damages at small amounts.

“The information sought to be elicited by the question addressed to the jury panel was pertinent to enable the plaintiffs to intelligently exercise their challenges, a valuable right. If the truth had been learned, they might have challenged some of these jurors peremptorily.” * * *

“In *Stein v. Chesapeake and O. Ry. Co.* 132 Ky. 322, 116 S. W. 733, 738, the Court wrote:

‘A juror on his voir dire qualified, declaring that he had not formed nor expressed an opinion concerning the merits of the case. But he had. The fact was not learned by appellant until after the juror had signed and returned the verdict, and the jury discharged. This was urged as a ground for a new trial. Being established, it should have prevailed.’ ”

“The reasons why a litigant is entitled to a new trial because a juror gave a false answer, or no answer, to a pertinent question addressed to him on the voir dire examination are set out at length in the case of *Shulinsky vs. Boston and Maine R. R.* 83 N. H. 86, 139 A. 189.”

“When the jury was empaneled a juror was asked whether he had had any business relations with or as a creditor or debtor of the plaintiff, and the juror remained silent. This juror was not challenged. It later appeared that he had signed a number of notes with the plaintiff on which the latter had borrowed money, and that one of these notes for \$200 was outstanding at the time of the trial. The Supreme

Court, in ordering a new trial, announced these principles: When the right of challenge is lost or impaired, the statutory conditions and terms for setting up an authorized jury are not met; and right to challenge a given number of jurors without showing cause is one of the most important rights to a litigant; any system for the empaneling of a jury that prevents or embarrasses the full, unrestricted exercise of the right of challenge must be condemned; a litigant cannot be compelled to make a peremptory challenge until he has been brought face to face in the presence of the court, with each proposed juror, and an opportunity given for such inspection and examination of him as is required for the due administration of justice; the right to reject jurors by peremptory challenge is material in its tendency to give the parties assurance of the fairness of a trial in a valuable and effective way; the terms of the statutes with reference to peremptory challenges are substantial rather than technical; such rules, as aiding to secure an impartial, or avoid a partial, jury, are to be fully enforced; the voir dire is of service not only to enable the court to pass upon a juror's qualifications, but also in assisting counsel in their decision as to peremptory challenge; the right of challenge includes the incidental right that the information elicited on the voir dire examination shall be true; the right to challenge implies its fair exercise, and, if a party is misled by erroneous information, the right of rejection is impaired; a verdict is illegal when a peremptory challenge is not exercised by reason of false information; the question is not whether an improperly established tribunal acted fairly, but it is whether a proper tribunal was established; if false information pre-

vents a challenge, the right is so disabled and crippled as to lose its essential value and efficacy, as to amount to its deprivation; the fact that juror disqualified either on principal cause or to the favor has served on a panel is sufficient ground for setting aside the verdict, without affirmatively showing that the fact accounts for the verdict; it is highly important that the conflicting rights of individuals should be adjudged by jurors as impartial as the lot of humanity will admit; next to securing a fair and impartial trial for parties, it is important that they should feel that they have had such a trial, and anything that tends to impair their belief in this respect must seriously diminish their confidence and that of the public generally in the ability of the state to provide impartial tribunals for dispensing justice between its subjects; the fact that the false information was unintentional, and that there was no bad faith, does not affect the question, as the harm lies in the falsity of the information, regardless of the knowledge of its falsity on the part of the informant; while willful falsehood may intensify the wrong done, it is not essential to constitute the wrong; that the injury is brought about by falsehood, regardless of its dishonesty, and the effect of the information is misleading, rather than a purpose to give misleading information is the gist of the injury; when the fact appears that false information was given, and that it was relied upon, the right to a new trial follows as a matter of law.

“The Court approves these principles and when they are applied to these cases they entitle the plaintiffs to a reversal of the judgments.”

Holding in like manner are *Cleveland Ry. Co. vs. Myers*,

197 N. E. 803, 50 Ohio App. 224, (1935), (juror severely injured in accident claimed to be fault of another, remains silent on voir dire examination concerning claims or actions had by members of the panel.)

Williams vs. Bridges, 140 California, App. 537, 35 P. (2nd) 407, (where juror on voir dire examination as to knowledge concerning facts of case failed to reveal that he had passed the place prior to or at time of accident, and noticed flimsy construction.)

Steinberg vs. Kuscher, 6 N. Y. S. (2d), N. Y. (Juror remained silent when questioned on voir dire as to whether any members of immediate family had been in accident.)

In the District Court of the United States for the District of Columbia, in quite a few cases, the Court has granted a new trial on the ground that jurors gave false answers or no answer to questions which they should have answered on the voir dire.

In Coles vs. Halstead, Law Number 71,084, the plaintiff sought to recover arrears of alimony, under a decree of the Supreme Court of New York. On the voir dire the jurors had been asked if any of them had been required to pay alimony, or were then paying alimony, and the jurors made no reply. After verdict in favor of the defendant, it was learned that one of the jurors had been a defendant in a divorce proceeding and been required to pay alimony pendente lite, and when his case was heard upon its merits, and before final decree in favor of his wife, he had made a financial settlement which was carried into the final decree. After considering the affidavits of several of the jurors, the late Judge Siddons wrote, as follows:

“The Court feels that juror Baker should have

made a full disclosure of his own marital experiences when the question was put instead of remaining silent as he did, and, in the Court's view of the matter, it is not important whether the other members of the panel that tried the pending case were influenced by any statements that juror Baker may have made to them about his own marital experiences, because the Court is of opinion that the plaintiff was entitled to have been informed about these specifically when the question was put on the voir dire, and there is, at least, great danger that juror Baker was a prejudiced against actions having for their object the enforcement of alimony decrees. For this reason, and for this reason alone, the Court is of opinion that the motion for a new trial should be granted. And it is so ordered."

In *United States v. Robert D. Dixon and William Rollins*, LVII, W. L. R. (1929), 441, Judge Siddons, in a written opinion, sustaining a motion for new trial, stated as follows:

"The grounds of the motion are two: one, that the jury was improperly constituted, and two, that one of the jurors failed to answer truthfully all of the questions propounded to him by the Court before the said juror was accepted for service in the case.

"The question presented by the motion arises under the following circumstances. A member of the panel which tried this case, one Miller Yates, was also a member of a panel that theretofore had tried another and a different case, a case in which the Court found it necessary, for certain reasons not here set out, to set aside the verdict. In the pending case jurors that were being examined with a view of

securing a jury to try it were asked if any of them had sat in the earlier case mentioned above, and the said Yates, thus examined, did not state that he had served on the other jury, and he and eleven others were sworn to try and did try the pending case. Therefore, counsel for the defendants and counsel for the Government had a right to assume that no member of the panel sworn to try this case had acted as a juror in the earlier case mentioned. Had he disclosed the fact that he had so served as a juror in the other case, he would have been subject to a peremptory challenge either by the Government or by the defendants. In saying this the court is not to be understood as holding that because the juror in question sat in earlier case that therefore he was disqualified to sit in this, but the fact that he did and yet concealed it from the court and counsel vitiates the verdict in this case to which he was a party.

“For these reasons the court feels constrained to grant the motion for a new trial, and it is so ordered.”

3. The affidavits of jurors were admissible and competent to show overt acts constituting misconduct, or that extraneous matters that might influence jurors were brought to their attention.

In the case of City of Amarillo, Texas, vs. Emery, et al., supra, it appeared that jurors had without authority, gone to view the property involved in the action and had so stated in the jury room, and that one of the jurors had stated in the jury room that he had discussed with a third person the testimony of a certain witness concerning the price for which the property had sold, and that some of the jurors had discussed the case with one of the defendant's witnesses during a dinner party. The affidavit of two of the jurors

with reference to the alleged misconduct were offered and the trial Court stated that it would consider as true the statements therein but would overrule the motion for a new trial as it was not the policy of the Federal Court to allow jurors to impeach their verdicts. In reversing the action of the lower Court, the Circuit Court of Appeals, 5th Circuit, stated, as follows:

“It is the general rule in federal courts that the allowance or refusal of a new trial rests in the sound discretion of the trial court and error cannot be assigned thereto. It is also the general rule that a juror will not be permitted to impeach his verdict. However, there are exceptions to both rules. While a juror may not testify to a matter resting in his personal consciousness affidavits of jurors, which show overt acts constituting misconduct or that extraneous matters that might influence the jurors have been brought to their attention, are admissible. *Mattox vs. U. S.*, 146 U. S. 140, 13 Ct. 50, 36 L. Ed. 917.”

To like effect are *Ewers Admx. vs. National Imp. Co.*, 63 Fed. 52, *Stevenson vs. Tennessee Copper Co.*, 193 Fed. 268; *Mattox v. U. S.*, 146 U. S. 140, *Schneider v. Moe*, *Supra*. *Skinner v. Cron*, 206 Iowa 338, 220 N. W. 341.

In *Litz v. Harman*, 151 Va. 363, 144 S. E. 477, referring to the general rule that affidavits of jurors cannot be used to impeach their verdict, the Court stated the law as follows, at page 372:

“This rule, however, does not dispose of this case. It does not prohibit the proof of an unauthorized view or of other improper conduct of a juror during the time of the trial, outside of the jury room, the

consequential impressions on his own mind thereby created, which were communicated by him to the other jurymen without the knowledge of the parties and for the purpose of influencing their verdict."

4. The appellants were entitled to a new trial as a matter of law and the action of the trial Judge in denying their motion for a new trial was an abuse of discretion.

The affidavits filed in support of the motion for new trial, received by the trial Judge clearly set forth facts showing misconduct on the part of two of the jurors, such misconduct as entitled the appellants to a new trial as a matter of law. The facts set forth in those affidavits were not contradicted by counter-affidavits, nor testimony of the jurors involved, and were, therefore, conceded as established. On the undisputed facts, therefore, prejudicial misconduct was established and it was the absolute duty of the Court to set aside the verdict and grant a new trial because the appellants had not received a fair trial but had been subjected to a verdict rendered by jurors who had deceived counsel by their silence on the voir dire, and who had made their own investigation at the scene of the accident, and observations and tests out of the presence of the other jurors, and when unauthorized to do so, and had not reached a verdict solely on the basis of the evidence produced in Court. In effect the trial Judge said we may admit the facts to be true but prejudicial misconduct is not established. In this we earnestly submit that he committed reversible error.

CONCLUSION

In conclusion it is respectfully submitted that there was an abuse of discretion on the part of the trial Judge when

he overruled the motion for a new trial, and the judgment should be reversed.

HENRY I. QUINN
Attorney for Appellant,
Lou Orenberg,
637 Woodward Bldg.,
733-15th St., N. W., Wash., D. C.

JOSEPH SITNICK
Guardian ad litem for
Rita Homes Niefeld,
Columbian Building,
416-5th St., N. W., Wash., D. C.

APPENDIX

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 8594

LOU ORENBERG ET AL,

Appellants,

vs.

MADELINE THECKER ET AL,

Appellees.

APPENDIX FOR APPELLANTS

Appeal from the District Court of the
United States for the District of Columbia

1 IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF COLUMBIA

MADELINE THECKER and GEORGE W. THECKER,
3241 N Street, N. W., Washington, D. C.,
Plaintiffs,

v.

LOU ORENBERG, 1701 Eastern Avenue, N. E., or
1400 Florida Ave., N. E., and
RITA HOMES, 5319 Nevada Avenue, N. W.,
Washington, D. C., *Defendants.*

Civil Action No. 5644.

COMPLAINT FOR NEGLIGENCE—DAMAGES
FOR PERSONAL INJURIES—
AUTOMOBILE COLLIDING WITH PEDESTRIAN

COUNT I

1. The plaintiff, Madeline Thecker, is an adult citizen of the United States, and a resident of the District of Columbia, and the defendant, Lou Orenberg, is a citizen of the United States and a resident of the District of Columbia. The matter in controversy exceeds, exclusive of interest and costs, the sum of One Thousand Dollars (\$1,000.00).

2. Heretofore, to-wit, on the 24th day of April, 1939, at the intersection of 16th and K Streets, Northwest, in the City of Washington, District of Columbia, the plaintiff, Madeline Thecker, was walking in a southerly direction on the east side of 16th Street, and was crossing K Street from the north side to the south side thereof, and at the same time and place, the defendant, by and through his agent, was operating an automobile, owned by him, in a westerly direction on the said K Street. The plaintiff was walking on the crosswalk and crossing on the green light. The defendant, acting as aforesaid, negligently, carelessly and recklessly propelled his said motor vehicle against
2 the plaintiff, and was operating the same without keeping it under reasonable and proper control, without keeping a reasonable and proper lookout, without sounding a warning signal, without yielding the right of way to the plaintiff, at a greater rate of speed than was reasonable and prudent under the conditions and circumstances then and there existing, at a greater rate of speed than twenty-five (25) miles per hour, and failed to slow up or stop the said motor vehicle, when, in the exercises of reasonable care, he saw, or should have seen, the plaintiff in a position of great peril, and the said automobile was operated in violation of Article II, Section 4(a), Article III, Section 6, Article VI, Sections 21(a), 22(b) and (c), 23(a), 24(a), and 28(a), which traffic regulations were then and there in full force and effect of law in the District of Columbia.

3. That as a result of the defendant's said negligence, the said motor vehicle struck the plaintiff with great force and violence, and threw her to the pavement with great force, knocking her approximately to the center of the intersection, and as a result thereof, the plaintiff sustained serious and permanent physical injuries, sustained numerous bruises, contusions, abrasions and lacerations in and about her head, body and limbs, plaintiff sustained a severe and permanent shock to her nervous system, and was rendered permanently sick, sore, lame, and disordered, plaintiff suffered and will in the future suffer great physical and mental pain and anguish, plaintiff suffered and sustained compound fractures of both the fibula and tibia of the left leg; plaintiff sustained a depressed fracture of the skull; plaintiff sustained a severe concussion of the brain; and plaintiff was obliged to undergo an operation in an endeavor to correct the injuries she sustained; plaintiff's hearing has become permanently impaired. The plaintiff has been and will in the future be unable to engage in her former occupation and usual activities, and, as a result of said injuries as aforesaid, plaintiff has been permanently disfigured, scarred, crippled and incapacitated, and her health has been permanently impaired, and she has been and will in the future be confined to her home and the hospital for a long period of time; plaintiff has suffered and will in the future suffer great pain and discomfort; plaintiff has lost and will in the future lose large sums of money because of her inability to work; all to plaintiff's damage in the sum of Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, the plaintiff asks judgment and claims of and from the defendant, the sum of Fifty Thousand Dollars (\$50,000.00), besides costs.

COUNT II

1. This action is brought by the plaintiff, George W. Thecker, husband of Madeline Thecker, for the loss of her companionship, services, and consortium, besides expenses incurred by reason of her injuries, against the defendant Lou Orenberg, claiming damages in the sum of Twenty-five Thousand Dollars (\$25,000.00).

2. The plaintiff herein repeats all the allegations contained in paragraph 2 of the first count and makes the same a part hereof, as though fully recited at length herein, except that after the word "plaintiff," it should read "plaintiff's wife," in the first part of the paragraph.

3. And as a result of the defendant's negligence as aforesaid, the plaintiff's wife, Madeline Thecker, was caused to Lou Orenberg, and being operated as aforesaid, with great force and violence, and she was thrown to the pavement with be struck by the motor vehicle owned by the defendant, with great force, knocking her approximately to the center of 16th Street, and as a result thereof, the plaintiff's wife sustained serious and permanent physical injuries, 4 sustained numerous bruises, contusions, abrasions and lacerations in and about her head, body and limbs, sustained a severe and permanent shock to her nervous system, and was rendered permanently sick, sore, lame, and disordered, suffered, and will in the future suffer great physical and mental pain and anguish, suffered and sustained compound fractures of both the fibula and tibia of the left leg, sustained a depressed fracture of the skull, sustained a severe concussion of the brain, and plaintiff's wife was obliged to undergo an operation in an endeavor to correct the injuries which she had sustained; and the hearing of plaintiff's wife has been permanently affected and impaired, and she has been and will in the future be unable to engage in her former occupation and usual activities and duties, and as a result of said injuries as aforesaid, plain-

tiff's wife has been permanently disfigured, scarred, crippled and incapacitated, and her health has been permanently impaired, and she has been and will in the future be confined to her home and the hospital for a long period of time, and the plaintiff, George W. Thacker, has been obliged and will in the future be obliged to incur large expenses for medical treatment, surgical treatment, X-rays, nurses, medicines, medical supplies, hospitalization, mechanical aid for impaired hearing, and additional help around the house, in an effort to have his wife cured and relieved of her ailments, and other expenses, and has lost the companionship, services, advice, and consortium of his wife; all to his damage in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, the plaintiff, George W. Thecker, demands judgment against the defendant, Lou Obenberg, in the sum of Twenty-five Thousand (\$25,000.00) Dollars, besides costs.

5

COUNT III

1. The plaintiff, Madeline Thecker, is an adult citizen of the United States, and a resident of the District of Columbia, and the defendant, Rita Homes, is a citizen of the United States and a resident of the District of Columbia. The matter in controversy exceeds, exclusive of interest and costs, the sum of One Thousand (\$1,000.00) Dollars.

2. Heretofore, to-wit, on the 24th day of April, 1939, at the intersection of 16th and K Streets, Northwest, in the City of Washington, District of Columbia, the plaintiff, Madeline Thecker, was walking in a southerly direction on the east side of 16th Street, and was crossing K Street from the north side to the south side thereof, and at the same time and place, the defendant was operating an automobile owned by Lou Obenberg, in a westerly direction on K Street. The

plaintiff was walking on the crosswalk, and crossing on the green light. The defendant, acting as aforesaid, negligently, carelessly and recklessly propelled the said motor vehicle against the plaintiff and was operating the same without keeping it under reasonable and proper control, without keeping a reasonable and proper lookout, without sounding a warning signal, without yielding the right of way to the plaintiff, at a greater rate of speed than was reasonable and prudent under the conditions and circumstances then and there existing, and at a greater rate of speed than twenty-five (25) miles per hour, and failed to slow up or stop the said motor vehicle when, in the exercise of reasonable care she saw, or should have seen the plaintiff in a position of great peril, and the said automobile was operated in violation of Article II, Section 4(a), Article III, Section 6, Article VI, Sections 21(a), 22(b) and (c), 23(a), 24(a), and 28(a), which traffic regulations were then and there in full force and effect of law in the District of Columbia.

6 3. That as a result of the defendant's said negligence, the said motor vehicle struck the plaintiff with great force and violence, and threw her to the pavement with great force, knocking her approximately to the center of the intersection, and as a result thereof, the plaintiff sustained serious and permanent physical injuries, sustained numerous bruises, contusions, abraisions, and lacerations in and about her head, body and limbs, plaintiff sustained a severe and permanent shock to her nervous system, and was rendered permanently sick, sore, lame, and disordered, plaintiff suffered and will in the future suffer great physical and mental pain and anguish, plaintiff suffered and sustained compound fractures of both the fibula and tibia of the left leg, plaintiff sustained a depressed fracture of the skull, plaintiff sustained a severe concussion of the brain, and plaintiff was obliged to undergo an operation in an endeavor to correct the injuries which she had sustained, plaintiff's hearing has become permanently impaired. The

plaintiff has been and will in the future be unable to engage in her former occupation and usual activities and, as a result of said injuries as aforesaid, plaintiff has been permanently disfigured, scarred, crippled and incapacitated, and her health has been permanently impaired, and she has been and will in the future be confined to her home and the hospital for a long period of time; plaintiff has suffered and will in the future suffer great pain and discomfort; plaintiff has lost and will in the future lose large sums of money because of her inability to work; all to plaintiff's damage in the sum of Fifty Thousand (\$50,000) Dollars.

WHEREFORE, the plaintiff asks judgment and claims of and from the defendant, the sum of Fifty Thousand (\$50,000.00) Dollars, besides costs.

7

COUNT IV

1. This action is brought by the plaintiff, George W. Thecker, husband of Madeline Thecker, for the loss of her companionship, services and consortium, besides expenses incurred by reason of her injuries, against the defendant, Rita Homes, claiming damages in the sum of Twenty-five Thousand Dollars (\$25,000.00).

2. The plaintiff repeats herein all the allegations contained in paragraph 2 of the first count, and makes the same a part hereof, as though fully recited at length herein, except that after the word "plaintiff," it should read "Plaintiff's wife," in the first part of the paragraph.

3. And as a result of the defendant's negligence, as aforesaid, the plaintiff's wife, Madeline Thecker, was caused to be struck by the motor vehicle operated by the defendant, Rita Homes, and owned by the defendant, Lou Orenberg, with great force and violence, and she was thrown to the pavement with great force, knocking her approximately to the center of 16th Street, and as a result thereof, the plaintiff's wife sustained serious and perma-

ment physical injuries, sustained numerous bruises, contusions, abrasions, and lacerations in and about her head, body and limbs, sustained a severe and permanent shock to her nervous system, and was rendered permanently sick, sore, lame, and disordered, suffered, and will in the future suffer great physical and mental pain and anguish, suffered and sustained compound fractures of both the fibula and tibia of the left leg, sustained a depressed fracture of the skull, sustained a severe concussion of the brain, and plaintiff's wife was obliged to undergo an operation in an endeavor to correct the injuries which she had sustained; and the hearing of the plaintiff's wife has been permanently affected and impaired, and she has been and will in the future be unable to engage in her former occupation and usual activities and duties, and as a result of said

8 injuries as aforesaid, plaintiff's wife has been permanently disfigured, scarred, crippled and incapacitated, and her health has been permanently impaired, and she has been and will in the future be confined to her home and the hospital for a long period of time, and the plaintiff, George W. Thecker, has been obliged and will in the future be obliged to incur large expenses for medical treatment, surgical treatment, X-rays, nurses, medicines, medical supplies, hospitalization, mechanical aid for impaired hearing, and additional help around the house, in an effort to have his wife cured and relieved of her ailments, and other expenses, and has lost the companionship, services, advice, and consortium of his wife; all to his damage in the sum of Twenty-five Thousand Dollars (\$25,000.00).

WHEREFORE, the plaintiff, George W. Thecker, demands judgment against the defendant, Rita Homes, in the sum of Twenty-five Thousand Dollars (\$25,000.00), besides costs.

THOMAS A. FARRELL
DORSEY K. OFFUTT,
Attorneys for Plaintiffs,
Southern Building,
Washington, D. C.

The plaintiffs demand a jury trial of all the issues in the above entitled cause.

THOMAS A. FARRELL
DORSEY K. OFFUTT,
Attorneys for Plaintiffs,

* * *

9

ANSWER OF DEFENDANTS TO COMPLAINT OF PLAINTIFFS

COUNT I

Answering the first count of the Complaint on behalf of the plaintiff, Madeline Thecker, this defendant, Lou Orenberg, says:

1. This defendant admits the averments of paragraph 1 of the Complaint.

2. This defendant admits that on the day and year and at the place stated in the Complaint a collision occurred between the plaintiff, Madeline Thecker, and the automobile of this defendant, and that the plaintiff, Madeline Thecker, was walking in a southerly direction on the east side of 16th Street and was crossing K Street from the north side toward the south side thereof, and at the same time and place the defendant, by and through his agent, was operating an automobile owned by him in a westerly direction on said K Street, but this defendant denies that the plaintiff, Madeline Thecker, was walking on the crosswalk and crossing on the green light. This defendant further denies all averments of paragraph 2 that state that this defendant, by and through his agent, improperly, negligently, carelessly, recklessly or unlawfully operated his said motor vehicle; but on the contrary says that while defendant, through his agent, as aforesaid, was operating his said motor vehicle in a westerly direction on K Street the plain-

tiff, Madeline Thecker, negligently, carelessly and recklessly and without regard to traffic conditions, suddenly stepped into the path of this defendant's said motor vehicle, that this defendant's automobile was being driven across the said intersection on a green light, but that the plaintiff, Madeline Thecker, was attempting to cross K Street upon a red light; that said plaintiff, Madeline Thecker, in the exercise of reasonable care, saw or should have seen the said approaching motor vehicle driven by this defendant, but, in disregard of her peril, said plaintiff stepped into the path of said approaching motor vehicle so quickly that this defendant was unable to bring said motor vehicle to a stop before striking said plaintiff.

3. This defendant admits that the said motor vehicle struck the plaintiff, Madeline Thecker, but denies that this collision was the result of any negligence on the part of this defendant or anyone acting for this defendant; this defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiff's other averments in paragraph 3 which relate to injuries sustained by said plaintiff because of aforesaid collision, save and except that this defendant denies that any loss, injury or damage, as averred therein, was caused by or due to any action of this defendant.

WHEREFORE, this defendant demands judgment dismissing the Complaint, with costs to the defendant in this behalf expended.

COUNT II

Answering the second count of the Complaint filed on behalf of the plaintiff, George W. Thecker, this defendant, Lou Orenberg, says:

1. That this defendant is advised that statements in paragraph 1 of count II of the Complaint filed on behalf of

the plaintiff, George Thecker, relate to matters that this defendant is neither called upon to deny nor admit.

2. This defendant says that paragraph 2 of Count II of the Complainant has been fully answered above paragraph 2 of Count 1.

3. This defendant admits that the said motor vehicle struck the plaintiff, Madeline Thecker, but denies that this collision was the result of any negligence on the part of this defendant or anyone acting for this defendant; this defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiff's other averments in paragraph 3 which relate to injuries sustained by said plaintiff because of aforesaid collision, save and except that this defendant denies that any loss, injury or damage, as averred therein, was caused by or due to any action
11 of this defendant.

WHEREFORE, this defendant demands judgment dismissing the Complaint, with costs to the defendant in this behalf expended.

WHEREFORE, this defendant demands judgment dismissing the Complaint, with costs to the defendant in this behalf expended.

McNEILL & EDWARDS

By Earl L. Edwards

1627 K Street, N. W.

Attorneys for Defendants.

Copy of foregoing Answer mailed
to Thomas A. Farrell and Dorsey
K. Offutt, Attorneys for Plain-
tiff, this 8th day of March, 1940.
EARL L. EDWARDS

* * *

15 ANSWER OF DEFENDANT RITA HOMES
 TO COMPLAINT FOR DAMAGES

Comes now the defendant, Rita Homes, a minor by her Guardian ad Litem, Richard L. Tedrow, and in Answer to the Complaint filed herein states that she cannot Answer the said Complaint because of her disability as a minor as stated.

RICHARD L. TEDROW
Guardian ad Litem
Columbian Building

DISTRICT OF COLUMBIA, ss:

Richard L. Tedrow, being first duly sworn, on oath states that he verily believes the facts stated in the foregoing pleading to be the truth.

RICHARD L. TEDROW

Subscribed and sworn to before me
this 24th day of October, 1941.

CHARLES E. STEWART
Clerk of the Court

BY WAY OF FURTHER ANSWER, Richard L. Tedrow, Guardian ad Litem, denies all allegations of damage and negligence contained in the said Complaint and he neither admits nor denies any of the other allegations because of lack of knowledge; any statement or allegation tending to impute or attempting to show liability on the part of the minor defendant, Rita Homes, is specifically denied.

RICHARD L. TEDROW

Copies of the foregoing mailed to Dorsey K. Offutt, attorney for the plaintiffs, and Henry I. Quinn, attorney for defendant Lou Orenberg, on October 24, 1941.

* * *

called on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OFFUTT:

Q. Now, Mrs. Thecker, you take your time now; is your apparatus on? Can you hear all right? A. Yes. If I can't, I will let you know.

Q. Now, Mrs. Thecker, will you state your full name? What is your full name? A. My name, my full name, is Madeline M. Thecker.

Q. Where do you live now? A. 3241 N Street, Apartment 15.

Q. And your husband is Mr. George W. Thecker, who is seated here in Court? A. Yes.

Q. What is your age? A. Seventy.

72 Q. And how long have you been married?
A. Forty-six years.

Q. Forty-six years; and how long have you lived in Washington? A. How long have I lived in Washington? All my life; in Georgetown.

Q. And were you living in Georgetown on the day you were hurt in this accident, in which this suit is pending? A. Yes.

Q. Where did you live in Georgetown then? A. 1716 34th Street, N. W.

Q. And did you live in an apartment or a house? A. I was then living in my own house, a house I did own.

Q. How long had you been living in that house? A. I lived there for 16 years.

Q. And did you have any roomers there? A. Oh, yes.

Q. How many roomers did you have? A. I had Georgetown students; sometimes four, sometimes three, during the term.

Q. And when you had Georgetown students, how much did you obtain from them? A. \$25.00 from that room.

Q. How many in that room? A. Two in one room, \$25.00.

73 Q. Two in one room, \$25? A. \$12.00 for the little room.

Q. So that when you say four, you got \$25.00 from four students, when you only had three students you had \$37? A. Yes.

Q. That is, you say \$12.00 for the little room when there was one in the room? A. Yes.

Q. Now, Mrs. Thecker, did you do your own work there? Did you do your own housework? A. Oh, my goodness; yes.

Q. Now, having in mind April 24, 1939, that is the day you were hurt wasn't it? A. Yes.

Q. Where were you going that day? A. I was going to see my husband at 16th and R, who applied for a position, or rather the position was offered me. Arrangements were made with my neighbor.

Q. And you were going to see this person? A. I was going to see this party on 16th Street, about an Apartment house as their manager of the property.

Q. And you were to meet your husband there? A. Yes.

Q. What time were you to meet your husband there? A. About 4:30.

74 Q. And was your husband employed in that locality at that time? A. Yes.

Q. Now, how did you get to 16th and K Street? A. I boarded the bus at 4:00 o'clock at 35th and R, got off at the southwest corner of 16th and K, waited for traffic, and went east across on 16th, because I saw a sign?

Q. Where did you see the sign? A. In front of the Carlton Hotel on 16th Street.

Q. What did the sign say? A. The sign said to board buses for 16th Street at the northeast corner.

Q. And then you walked over to the northeast corner?
A. Yes, sir.

Q. And what light did you go over on? Was the light in operation at that intersection? A. Yes.

Q. Were the traffic lights in operation then? A. Oh, yes.

Q. I waited for the traffic light to get across K.

Q. And on what color light did you cross on? A. Green.

Q. And when you got over to the northeast corner, what did you do? A. When I got to the northeast corner I turned and looked, turned this way, and saw a Petworth bus go up 16th Street standing by K Street.

Q. Where was the bus at that time? A. The bus was at the northeast corner of K on the outside lane of traffic—middle.

Q. Now, let me show you this diagram. Can you see this diagram from where you are? A. Yes.

Q. You see it plain; 16th runs up and down here, and K this way (indicating)? A. Yes.

Q. These marks here—you see them from there? A. Yes.

Q. These marks, these separation islands, or separation zones, the one on the north side of K and one on the south side of K? A. Yes.

Q. This is the northeast corner, and this is the bus (indicating)? Where was the bus? A. Right there (indicating).

Q. And with reference to 16th Street, where was it? A. The bus was marked "Petworth".

Q. How close to 16th was it; was it close to it or far away? A. I couldn't judge it in the amount of feet, but it was standing, as the bus was standing there waiting for its turn—I couldn't gauge the distance.

76 Q. Where did you say it was standing? A. If you will put that up there I will show you.

THE COURT: For the purpose of the record, I do not think it has yet been stated; as I understand it, the plaintiff stopped on the south side of the safety zone?

MR. OFFUTT: Yes, sir; that is right.

BY MR. OFFUTT:

Q. You said the bus was stopped on the south side of the safety zone, and you were on the northeast corner? A. Yes.

MR. QUINN: That is not indicated as a safety zone; it is a separation island.

MR. OFFUTT: Isn't it a combination safety zone and separation island?

MR. QUINN: Anything that keeps you off the street is a safety zone.

MR. OFFUTT: Well, I can say the separation island or safety zone.

MR. QUINN: Separation island suits me better.

MR. OFFUTT: I don't quite see Mr. Quinn's point.

THE COURT: I don't either, so proceed gentlemen; you can use either term and have it accepted.

77 BY MR. OFFUTT:

Q. Now, what did you do when you saw the bus waiting there? A. Do you want me to tell when I was at the corner, the northeast corner, the northeast corner of 16th and K, I wanted to go up 16th Street, and I stepped off the curb about halfway, and as I glanced at the green traffic light at the southwest corner, traffic was going, and stopped east and west. I put my foot off the curb, and gave another glance at the green light, and made for the bus, several steps, about midway, and remember no more until I was in the Emergency Hospital.

Q. Now, when you say you looked at the light, the green light, what corner was that green light on? A. That green light was at the southwest corner, and I glanced up at the green light before I stepped off the curb.

Q. And then after you stepped off the curb, you glanced at it again? A. Yes, sir; I glanced at it again and made for the bus.

Q. And when you glanced at it the second time, when you stepped off the curb, what was the color of the light?

THE COURT: The curb?

78 THE WITNESS: I looked at the green light before I stepped off the curb and then glanced at it again and saw it was safe to cross, and about midway I remember no more.

BY MR. OFFUTT:

Q. Midway between the first curb and safety zone, or separation island? A. Yes, sir; the first lane.

Q. And how close were you to the corner? Were you near the corner here or away down here somewhere? Were you near the corner? A. I was about midway, but that bus wasn't that far back. That bus was closer to the 16th Street island.

* * *

140 DONALD RUSSELL SHEPHERD

* * *

DIRECT EXAMINATION

* * *

141 Q. Now, on April 24, 1939, were you operating a taxicab in the vicinity of 16th and K Streets, Northwest, Washington, D. C.? A. I was.

Q. And in which direction were you operating the cab? A. I was going west on K Street.

Q. Did you have a fare in the cab? A. I did not, no.

Q. And were you going where, do you recall? A. I was just cruising.

Q. And were there any other cars in front of your car? A. One car in that block only.

Q. What block were you in? A. Between 15th and 16th on K Street, on the north side of the street.

Q. And in what portion of the street, in the center of the street, or between what they call the safety zone or
142 separation island? A. I was in the south part of the north lane, very close to this traffic island.

Q. Very close to this traffic island or separation lane?
A. Yes.

Q. And were there any cars parked along the curb?
A. There were several cars parked there.

Q. And at that time the Statler Hotel, which is now located at 16th and K, was not there? A. No, it was not there.

Q. As you approached 16th Street, you say there was another car in front of you? A. Yes, sir.

Q. Do you know whether it was a District car or foreign car? A. Pennsylvania car.

Q. Pennsylvania car? A. I didn't know the make.

Q. I beg your pardon? A. I didn't know the make, but it was Pennsylvania tags.

Q. Now, as you approached 16th can you estimate the speed at which this car was traveling? A. Between 20 and 30; I don't know exactly.

Q. And did it slacken up its speed as it approached
143 the intersection? A. It may have slacked up some, I didn't because I knew the light was going to change green because you make the light when you come down from 15th.

Q. And that is when you fell in back of this other car?
A. I did. I don't know whether the other car did, but it is possible.

Q. And as you came down in that lane you observed the other car ahead of you, the Pennsylvania car? A. I observed the car but I didn't pay any attention to it. There was just the two of us there.

Q. There was no other car there? A. I don't think so. If there was, it must have pulled over and parked after the accident.

Q. At the time you approached 16th, what was the light, if you noticed? A. The light was red as I was going down K from 15th.

Q. That would be the light on the northwest corner? A. Yes, sir.

Q. Did you observe this pedestrian who was struck? A. I saw her step off the curb.

Q. What was the color of the light as she stepped off the curb? A. I believe the light was red when she stepped off the curb.

144 MR. QUINN: Just a minute; what light?

MR. OFFUTT: The light on the corner.

MR. QUINN: Let him testify.

THE WITNESS: The light on the west side of 16th Street controlling K Street traffic.

* * *

146 Q. Now, can you tell us, without looking at that picture, about where her car was at the time you saw the lady step off the curb? A. I would say between those two cars, between the first and second car.

Q. That is the car even with the line of the building? A. Well, it should be a little back of the building. Yes, sir, it is on that photograph there.

Q. Just mark it there. A. (Witness indicates on exhibit).

Q. What did you start to say, that it should be back of the building line? A. I thought they weren't parked there, but evidently that one is.

Q. On that day were those cars parked back of the building line, as you remember it? A. I don't remember, but as I remember, there was one a little ahead of the building line.

Q. Did you have any difficulty in seeing this lady step off the curb? A. No. I saw her very plainly as she stepped off the curb.

147 Q. And had this car bearing Pennsylvania tags slowed up at the time? A. As far as I know, it did not. I hadn't, and I was about thirty or forty feet back of it, and if it had I perhaps would have noticed it.

Q. And you say you were about thirty or forty feet back of it? A. I imagine that was about it.

Q. Can you show us where the lady was when she was struck? Was it on the crossing? A. Just about on the crossing.

* * *

149 BY MR. OFFUTT:

Q. Were there cars parked all along the curb? A. Yes, sir, there were.

Q. By the building line? A. I think there were some by the building line where she was then.

Q. And from where you were back thirty or forty feet you could see her when she stepped off the curb? A. I did see with no trouble.

Q. Now, what happened from that time on? Tell what occurred. A. Well, the lady stepped off and this car ahead of me hit her and knocked her, I don't know how far.

This Pennsylvania car stopped immediately because there were several feet between the front of the car and where she was laying in the street when she came to a stop.

* * *

150 Q. About how far, or where was the woman who was struck knocked? Where did she land? A. At least seven or eight feet from the outside intersection, from the cross-walk.

Say the crosswalk is even with the curb, or with the cross-walk, she was laying at least seven or eight feet out toward the center of 16th Street.

Q. When did the automobile which struck her and knocked her, stop? A. Well, several feet from the lady that was lying on the pavement.

* * *

156 Q. And in addition to that, you were how many feet back of the Pennsylvania car? A. I said thirty or forty feet.

Q. Thirty or forty feet back, and from where you were running up to a point close to that crosswalk there
157 were parked automobiles; isn't that so? A. Yes, sir.
....

* * *

Q. In other words, you were here and she here, with you 30 or 40 feet back here, and you weren't paying any particular attention to the speed of her car, or anything?
A. No, I wasn't.

Q. As a matter of fact, the first time you noticed it was down close to 15th Street? A. No, I didn't. I didn't notice it until just before the accident occurred, and if there hadn't been an accident I might not have noticed it then; but I came down 15th Street and turned.

Q. Do you mean when you were that distance back
158 of 16th Street you noticed the red light but you didn't notice whether the car in front was slowing up for it, or anything else? A. No.

Q. But you noticed that this lady stepped off the curb just before the light over there turned from red to green. Now, what color was it when she was struck? A. Green.

* * *

165 Q. And you saw her when she stepped off the curb. That was your testimony here a moment ago?
A. Yes, that is what I did.

Q. And did you see how many steps she took out in the street before she was hit? A. No, sir, I did not.

Q. Did you see whether she had gotten half way between the north curb and the island before she was hit? A. I didn't say as a matter of feet. She had gotten half way across when she was hit.

Q. I notice in your statement to Mr. Offutt you say this: "Immediately ahead of me was a car bearing Pennsylvania tags. It was being operated at a speed of 25 to 30 miles per hour. This automobile when it approached the intersection of 16th Street, the light was red, but it changed to green just as the Pennsylvania car reached approximately the crosswalk."

Now, today you say it was red, and would have
166 changed when the car was about 30 or 40 feet away from the crosswalk. A. I had better stick to the statement. It has been too long for me to remember how far she was back.

Q. Then the car had about reached the crosswalk when the light to change to green? A. If that is what I say in the statement, I will vouch for that.

Q. "There were some cars parked at the north curb and an elderly woman was walking southward on the crosswalk from the curb to the safety platform. She was about four or five feet from the north curb when I first saw her." A. That is the curb over here on the right, yes.

Q. From the north curb pointing to the island? A. Well, no, the north curb of the sidewalk.

Q. Of the sidewalk. A. Yes.

Q. In this statement you say, "She was about four or five feet from the north curb when I first saw her," that will be four or five feet out into the traffic lane when you first saw her? A. No, I don't mean that, I mean getting off the curb before she got in the street, when I first noticed her.

Q. Now, which is true, that she was on the curb and stepped off, or that she was, as you say in this statement, four or five feet away? A. I will stick to the statement.

167 Q. I don't want you to stick to the statement, but tell the jury what occurred. A. I couldn't tell you; frankly, I don't remember.

Q. "She was walking very quickly and the Pennsylvania car did not slow up and did not sound a horn."

Is that true or not. A. I don't remember her sounding a horn, and I don't remember her slowing up.

Q. Now, when the lady was crossing the walk in the crosswalk there at the point you have indicated, and the Pennsylvania car was right at that white line at the crosswalk, how many feet was between them at that time; five or six feet? A. I didn't quite get the question.

Q. When the car was just at the crosswalk, as you say in this statement, and the light changed to green— A. (interposing) Yes.

Q. You say the lady was out in the crosswalk four or five feet. How far from the car was she? A. Well, I will say she couldn't have been over six feet.

Q. And this car had been going, according to your statement, between 25 and 30 miles an hour, and you say today between 15 and 20. A. I changed it.

168 Q. And it stopped straddling the crosswalk? A. Yes.

Q. And it was going 20 to 25, or 25 to 30, and it didn't slow up at all? A. As far as I know, as far as I noticed, it had not. I said as far as I know it hadn't slowed up.

Q. And how did you judge the speed of this car that was ahead of you? A. By the way I drive myself. I usually drive between 20 and 30 miles an hour.

Q. And you just judged her speed by the speed you customarily drive at? A. Yes, sir.

Q. And you customarily violate the speed limit, do you? A. I customarily drive at least the speed limit, yes, sir.

Q. What was the speed limit there at that time, 22 miles an hour? A. 22 miles an hour.

Q. And from the fact that you generally drive 25 to 30 you judged her speed to be that? A. Yes.

Q. Did you notice when you turned in from 15th Street this car ahead of you? A. No, sir, I did not.

169 Q. When did you first notice it? A. Oh, say a minute before the accident, or half a minute.

In other words, I was creeping up on her, and I know that light is going to change by the time I get there because I come down from 15th. Coming across 15th you never can.

Q. And you were creeping up on her? A. Yes.

Q. And you gave her speed at 20 to 25 miles an hour, and yet you were going faster than she was? A. Perhaps I was going a few miles faster.

* * *

175 Q. And you noticed this woman step off the curb? A. Yes.

Q. So she did step off the curb? A. Undoubtedly.

Q. This statement is just the same as you swore to in Court? A. Yes.

Q. So you saw her, with no other intervening car between you and the intersection? A. Yes.

Q. And with all those cars parked up close to the walk? A. Yes.

Q. And you state in this statement that the car that struck her was going, you would judge between 20 and 30 miles an hour? A. Yes, sir.

Q. "But, however, I am only judging that from the way I usually drive. I definitely can't say she was evceeding the existing speed law." A. That is correct.

Q. How far do you think the defendants' automobile traveled after it struck this lady? A. A very
176 few feet.

Q. About three— A. (interposing) Because it didn't travel as far as the lady who was hit was knocked, because she stopped before she ran over her again.

Q. It traveled about three feet, didn't it, after it struck her? A. I think I said about half the distance of the cross-walk, which would be about six or seven feet.

* * *

242 BEVERLY BENJAMIN BURTON

* * *

DIRECT EXAMINATION

* * *

Q. Mr. Burton, where did you live at the time of this
243 accident, which you are on here today, that occurred
April 24, 1939, at 16th and K? A. 1323 R Street,
N. W.

Q. And now were you present at that corner when that accident occurred? A. Yes, sir.

Q. And now, tell us where you were and what you were doing? A. Well, I was on my way from work. I was going home.

Q. How were you going home? A. Riding a bicycle. I was riding a bicycle. I have been riding a bicycle here in the District since 1914.

Q. The same bicycle? A. Yes. I was on my way home, and I happened to stop on 16th Street, 16th and K, for the red light.

Q. For the red light? A. Yes.

Q. Where did you stop? A. I stopped on the south-
244 east corner.

Q. Did you stop on the southeast corner by the Carlton Hotel, or out here where the separation island place is now? A. I don't remember now.

Q. What is your best recollection? A. I know I stopped on the corner, but I don't think I crossed the first alleyway.

Q. And your best recollection is that you stopped at the corner where the Hotel was? A. At the corner.

Q. Where was the light that was red for you? A. Straight in front of me, on the right side going north on 16th.

Q. What happened while you were there? A. Well, while I was there, waiting for the green light, I happened to look down across the Street, and I saw a woman in the air. The automobile had struck her, and I saw her, and she was going in the air, like that (indicating), and fell out in 16th Street.

* * *

246 Q. When did the light turn red? Just before you reached the corner or as you reached the corner?
A. Just a few seconds before I got to the corner.

Q. And with reference to the time the light changed red and you saw the woman going through the air, was that a matter of seconds? A. Yes, sir, a matter of second.

* * *

247 Q. Now, tell me isn't it a fact that just at the time that you noticed the lady being struck there were automobiles out her in the intersection going across west on K Street? A. No, sir.

Q. What? A. I don't remember automobiles crossing at that time.

Q. Didn't you see the automobile crossing just about—well 30 feet ahead of this automobile? A. Oh, yes. Before the automobile struck the woman?

Q. Yes. A. There was a car crossing in front of her.

Q. And that car was just about 30 feet ahead of the car that struck her, wasn't it? A. I don't know about that, 30 feet, but I know I saw the car cross.

248 Q. At the time you saw the car that struck her, at that time this car was out in the intersection going west on K Street? A. Yes, sir.

Q. And there were other automobiles approaching on K Street, were there not? A. Not in front of the girl.

Q. You only saw one in front of the girl? A. Just the one in front of the car that struck the lady.

Q. You say you just saw one in front of the car that struck the lady? A. That is all.

Q. That traffic light was red for you and green for traffic on K Street at the time, wasn't it? A. I only noticed the red light in front of me.

Q. But you did notice traffic going across the intersection before the woman's car struck her? A. Yes.

Q. Did you notice a tire mark back of this car that struck her? A. Yes.

Q. How long was that about; five or six feet? A. Yes, sir; about five or six feet. Somewhere along in there.

249 Q. And this automobile, when it struck her, stopped almost instantly, didn't it? A. Yes, sir; it did.

Q. What do you say? Do you think it stopped in four or five feet? A. About 10 feet.

Q. Ten feet? A. Yes, something like that.

* * *

251 Q. I want to show you, Mr. Burton, plaintiff's Exhibit No. 3 and ask you if you recognize this as a photograph of that intersection? This is going west on K Street, the Carlton Hotel corner isn't shown, but it is back over here, here is the line near the Carlton Hotel, and here is the north line, and here is the place where the lady was struck (indicating)? A. Yes, sir.

Q. Now, you saw automobiles cross over 16th Street, or at least one in front of this young lady's car at the time this accident happened? A. Yes, sir.

* * *

256 Q. And you looked over and saw the light red against you? A. Yes.

Q. And after that you saw one car out in the intersection going west on K Street, and then you saw this young lady's car in the accident? A. When that car struck the woman I only noticed one car and that is all I noticed.

Q. And that car was going west on K? A. Going west.

Q. And it was just crossing over the intersection, over 16th Street? A. Yes.

Q. Is that correct? A. Yes.

* * *

324

RITA HOMES

* * *

DIRECT EXAMINATION

* * *

328 BY MR. QUINN:

Q. You were taking your uncle to Dr. White's office were you not, Dr. Charles Stanley White? A. Yes, sir, that is right.

Q. And had your uncel been operated on just shortly before that? A. Yes, sir.

329 Q. And he was going back to have the doctor examine him? A. Yes, sir.

Q. What was your uncle's physical condition at that time? A. He was very sick.

Q. And he was seated in the back of the car? A. Yes.

Q. By the way, you are married now, aren't you? A. Yes.

Q. And a mother? A. Yes, I am.

Q. And during that year, what other car had you been driving? A. I had only been driving my father's car.

Q. And was your father's car out there at the house that day? A. No, it wasn't. If it was, I would have driven his car.

* * *

366 BY MR. QUINN:

Q. Mrs. Niefled, it has been brought out that at the time of the accident you were Rita Homes, and you were driving your cousin's car and you were on your way to the doctor's taking your uncle there? A. Yes, sir; I was.

Q. Your aunt was along? A. Yes.

Q. Where was your aunt seated in the car? A. She was sitting next to me, in front.

Q. And your uncle was in the rear seat? A. Yes, sir.

Q. I think you stated your uncle was a right sick man and had just had an operation? A. Yes, sir.

Q. When you came along K Street, by the way, where did you enter K Street? A. I entered K in northeast. K Street starts up at Florida. That is where I entered K.

367 Q. And you continued on K all the way to 16th Street northwest? A. Yes.

Q. And as you came up to this intersection, at what speed were you driving? A. I was not driving fast, because of my uncle. I was going between 15 and 20 miles an hour, approximately that.

Q. And as you came along in this block and approached 16th Street, did you notice whether there were any cars parked at the north curb of K? A. Yes, there were cars parked.

Q. When did you first see Mrs. Thecker? A. While I was approaching the intersection to go through, she ran out from the curb and that is the first time I saw her, when she was practically in front of my car.

Q. How far ahead of you was she, when she ran out? A. There isn't a great deal of difference between the curb and the island, I don't think more than five or six feet, with the parked cars.

Q. How was the traffic light? A. The traffic light was green for east and west traffic.

Q. Was there any traffic ahead of you? A. Yes,
368 but I do not know how many there were. I know I was behind a car going through that intersection?

Q. How far behind that car were you? A. I must have been going about 20 or 25 feet behind that car.

Q. And was that car out here in the intersection when you saw her? A. Yes.

Q. And when you saw her, was she walking or running? A. She was running.

Q. And what did you do? A. I applied my brakes immediately, but the car had already struck her. She ran right in front of the headlight and bumper, and she was thrown to the street.

Q. By the way, did you get out of the car? A. No, I didn't get out of the car.

Q. What was your condition? A. I was crying and very upset, and I guess that is the reason I didn't get out. When I saw her fly in the air, I didn't know what to do.

Q. Where did your car come to a stop? A. About the edge of the island, on the crosswalk there.

Q. By the way, how was your car with reference to the island as you came up there? A. Just a few feet
369 from the island. There isn't much space when there are those cars parked.

Q. These cars parked here, were they parked up close to the crosswalk of 16th Street? A. Yes, they were parked close to the crosswalk.

* * *

335 FRANKLIN FLOYD RICHARDSON

a witness produced on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUINN:

Q. Give us your full name? A. My name is Franklin Floyd Richardson.

Q. At the present time what is your business? A. I am in the United States Navy.

Q. And connected with what branch? A. Naval Research, aviation base, Anacostia, D. C.

Q. How long have you been so connected? A. Since May, 1942.

Q. Mr. Richardson, now on April 24, 1939 how were you employed? A. By the Capital Transit Company.

336 Q. In what position? A. As a bus operator.

Q. On the 24th of April, 1939, did you witness an accident at 16th and K Streets, Northwest? A. Yes.

Q. In which Mrs. Thecker was involved? A. Yes.

Q. In what direction was your bus headed? A. My bus was headed west, but I was going to turn north.

Q. Going to turn north on 16th Street? A. Yes, sir.

Q. Now, at the time the accident happened, where was your bus with reference to the corner of this north island on K Street? A. Right about where your finger was, back about a few inches, a fraction of an inch back. Move it back a little.

Q. About there (indicating)? A. About there.

Q. Pretty close up to the end of the island, then? A. Yes.

* * *

338 Q. Now, tell us how the traffic lights were as you were standing there and at the time the accident happened? A. As I was standing there, the traffic lights were green for east and west traffic, and I was waiting for traffic to clear on the inside, at my right, so I could make a right-hand turn into 16th.

Q. You mean waiting for traffic passing across 16th on K, at the island, so that you could turn in here (indicating)? A. Yes, sir.

Q. And was that the condition at the time the accident happened? A. Yes; we usually had to wait—

MR. OFFUTT: I object.

MR. QUINN: Just a minute, we will save time, we will leave out what we usually have to do.

BY MR. QUINN:

339 Q. Now, when you made your turn into 16th, when traffic was going west on K, between the island and the curb, what light would you wait for? A. I didn't understand you, sir.

Q. What light would you wait for if the traffic had been all clear so that you could make your turn, if traffic was going west on K Street, across the intersection, and you couldn't make your turn without interfering with that

traffic, on what light would you make your turn? A. I would make it on the yellow light if I could get through those cars.

Q. What attracted your attention to the accident? A. A woman sitting immediately to my rear screamed, and I looked to the right and saw the lady in the street.

Q. And did you see the automobile and the lady together before the automobile came to a stop? A. No, sir.

Q. Where did the automobile stop? A. It was almost abreast of me, the front of the bus and the front of the car—no, that automobile was about halfway back of the bus, halfway back of the bus.

Q. Do you mean from the front of the bus? A. Yes, sir.

Q. How was the light at the time when the lady
340 screamed? A. The light was green.

Q. For what traffic? A. For the traffic east and west.

Q. Just before the lady screamed, was there any traffic going across 16th Street on the intersection ahead of the car that struck the lady? A. Yes, there was traffic there, because I couldn't get around.

Q. You saw that traffic— A. (Interposing) Yes.

Q. (Continuing) Going across on the green light? A. Yes.

* * *

429

EMMETT J. MOTLEY

was called as a witness on behalf of the defendant and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUINN:

Q. This is your name on the bottom of this plat? A. Yes.

Q. Will you give us this information: Have you any records to show a driveway, private driveway, that came

in off of K Street just to the rear end of the old Draper residence which was on that corner of 16th and K in April, 1939? A. Yes, I have such a record.

Q. Will you tell us how far the west side of the driveway was from the east curb of 16th Street? A. 111 feet, east of the east curb of 16th Street. That is measured along the north curb of 16th Street—of K Street, rather.

Q. How wide is that private driveway? A. It is 10 feet wide.

Q. Will you tell us the distance between the west curb of 15th Street and the east curb of 16th Street—in other words, the length of that block? A. The length of the block, measured along the curb, that is, the length between the west curb of 15th Street and the east curb of 16th
430 Street is $497\frac{1}{2}$ feet.

Q. And the width of 16th Street, as shown on this plat, is 48.9 feet? A. Yes.

Q. Will you give us the distance between the west curb of 16th Street and the east curb of 17th Street? A. That distance, measured along the curb between the west curb line of 16th Street and the east curb of 17th Street is $507\frac{1}{2}$ feet.

Q. What is the distance between—or have you got that measurement—the west curb of 17th Street and the east curb of Connecticut Avenue? A. No, I do not have that.

Q. Did you say 507 feet? A. $507\frac{1}{2}$.

MR. QUINN: That is all.

CROSS EXAMINATION

BY MR. OFFUTT:

Q. Are those the official records of the District that you have there, that you are referring to? A. They are.

Q. You have the original plat of the District in your hand, and the notes you made were taken off of the original plat? A. That is right.

431 Q. The driveway that you are referring to I think you said was 111 feet from the east curb? A. That is right.

Q. Do you know how far that sign that is here (indicating) and was there in 1939, that says "No Parking" from that point down—how far that sign was from 16th Street? A. No, I could not locate any sign that was there on that date.

Q. You could not? Do you see this photograph, plaintiff's exhibit No. 3—I mean, this sign on the lamp post there. A. No, I did not get a request on that.

Q. You did not look for it? A. No, I was not there.

Q. You did not look on the plats or on the records of the District? A. It does not show on the plat.

MR. QUINN: Would it show on the plat, that sign?

THE WITNESS: No, that sign would not be there.

BY MR. OFFUTT:

Q. It would be in the Police Department Sign Shop, or records? A. I could not say whether it is there or not. It might be.

Q. Do you know how far the crosswalk white line
432 was back from this fire box? A. I tried to find that for you, Mr. Offutt, but I was unsuccessful. The paint shop people who put that there,—Mr. George Butler tells me it is his impression that it was 25 feet, but he did not make a record, but he is just going from recollection.

Q. Is it in the same place today as it was then, so far as their records show? A. I do not know that.

Q. Do you know how far it was to the alley in the middle of the block between 15th and 16th Street, the alley that ends at the end of the Investment Building? A. I can give it to you.

Q. Is that about half of the block, the distance from 16th Street.

MR. QUINN: From the east curb of 16th Street to the west side of that alley—is that what you mean? A. It is 208½ feet.

Q. Is that the west side of the alley? A. That is right.

Q. What is the width of the alley? A. 15-foot alley.

* * *

450

WILLIAM B. HAMPTON

was recalled for

FURTHER DIRECT EXAMINATION

BY MR. QUINN:

Q. You are here in response to a subpoena to bring some records in connection with the traffic lights at 15th and K Streets? A. I am.

Q. And also at 16th and K? A. Yes, sir.

Q. In April, 1939, were there lights at the corner of 15th and K similar to those at the corner of 16th and K? A. Yes, sir.

Q. That is, the red, the amber and the green, or the green, amber and red? A. Yes, that is right.

Q. How were those lights synchronized? Did the 16th Street lights and the 15th Street lights work at the same time together, the same color? A. Just what do you mean?

Q. For instance, if the light for westbound traffic on K Street, at the intersection of 15th, was red, what would the light be for westbound traffic at 16th and K? A. That would be green.

451 Q. Now, when the red light came on at 15th and K, would the green light at 16th and K for westbound traffic come on immediately? A. Which direction?

Q. West. A. You mean—

Q. When the red light flashed out to stop westbound traffic at 15th and K, would the green light for westbound traffic come on immediately at 16th and K? A. It would come on approximately 5 seconds afterwards—wait a minute. No, it would not come on immediately.

Q. How soon afterwards? A. You mean, for the westbound traffic on K Street?

Q. What is that? A. You mean, for the westbound traffic on K Street? You mean, how soon after that it comes on at 16th Street?

Q. Yes, when the light is red at 15th and K. A. The light is green at 16th and K.

Q. Does it come on immediately with the red light at 15th and K? A. No.

Q. How soon afterwards? What space is there between? How many seconds? A. Five seconds after the 15th Street light turns green, 16th Street light turns red.

452 Q. Does the same thing apply, that five seconds, after the 15th Street light turns red, that 16th Street light turns green? A. That is right.

Q. Under the traffic laws, if the light is green for southbound traffic on 15th Street, can a person make a right-hand turn into K to go west? A. He can make a right turn, yes.

Q. But if it is red for southbound traffic on K, and green for westbound—I mean, red for southbound traffic on 15th and green for westbound traffic on K at the intersection of 15th, he has to wait until his light turns green before he makes a turn, does he? A. Yes.

Q. How long after this light, the green light for westbound traffic at 16th and K flashes on, does it remain green? A. 40 seconds.

546 MOTION TO SET ASIDE JUDGMENT AND VERDICT AND GRANT A NEW TRIAL

Now comes the defendant, Lou Orenberg, by his attorney, and Rita Niefeld (nee Homes) by her guardian ad litem, and moves the Court to set aside the judgment and verdict in the above entitled cause and grant a new trial, and for reasons therefor, says:

1. That the verdict of the jury was contrary to the evidence and the law.

2. That the jurors deliberately ignored the instructions of the Court and reached their verdict on matters which were not established by evidence in open Court, but were brought to the attention of the jurors during their deliberations by certain jurors who had gone to the scene of the accident and made certain observations and experiments while the case was on trial.

3. That two of the jurors, during the course of the trial made certain observations, inspections and experiments at the scene of the accident and reported what they had observed and noticed and the conclusions which they had reached as the result of said observations and experiments and urged other jurors to disregard the testimony of one of the witnesses produced by the defendants because of the conclusions which they had reached by reason of their wrongful observations and experiments at the scene during the pendency of the trial. Affidavits of the jurors, Gregory
547 J. Aires, Frank L. Bease, and Louis Rudden, are hereto attached and prayed to be read as a part hereof.

4. That the Court erred in refusing to permit counsel for the defendant, Orenberg, to prove that he had no insurance to protect him against the accident involved in this case.

5. The Court erred in refusing defendants' instruction Number Four as originally presented and as amended.

6. The said verdict was excessive.

7. For other reasons to be shown to the Court at the time of the hearing on this motion.

HENRY I. QUINN,
Attorney for Defendant,
Orenberg,
637 Woodward Bldg.,
733 15th St., N. W., City.

JOSEPH SITNICK

*Guardian ad litem for**Rita Homes,*

Columbian Building.

Copy of foregoing motion, affidavits in support and points and authorities were served on plaintiffs' counsel, Dorsey K. Offutt, Esq., this 18th day of March, A. D., 1943.

HENRY I. QUINN,

*Attorney for Defendant,**Orenberg,*

637 Woodward Bldg.,

735 15th Street, N. W.

* * *

548 AFFIDAVIT OF GREGORY J. AIRES

DISTRICT OF COLUMBIA, ss:

I, GREGORY J. AIRES, being first duly sworn, on oath, depose and say that I was a member of the jury which returned a verdict in the above case, and I recall that during the deliberations of the jury in the jury room, Alonzo H. Adkins, a member of the jury, in discussing the verdict that should be returned with the juror, Louis Rudden, who had voted in favor of a verdict for the defendants, drew a rough diagram of the intersection of Sixteenth and K Streets, N. W., and told the said Louis Rudden, that he had been by the scene of the accident involved in this case, and had watched the manner in which the buses would turn to the right off K Street for the purpose of going North on Sixteenth Street, and he stated that the buses that he observed making the said turn, when the light was green for West bound traffic, would pull out and partly around on Sixteenth Street while the light was green in order to slip through moving West bound traffic, and that none of the bus operators that he observed stopped their buses in the position that the witness, Richardson, said he stopped

his bus, on the day of the accident while he was awaiting an opportunity to make the turn on the green light at the Northwest corner for West bound traffic; and that the said Adkins argued from what he had observed other bus drivers doing at Sixteenth and K Streets, N. W., that they should throw out or disregard entirely the testimony of the witness, Richardson. After the aforesaid statements made by the said juror, Alonzo H. Adkins, as outlined above, the juror, Louis Rudden, finally changed his vote in favor of the defendants to one in favor of the plaintiffs.

GREGORY J. AIRES.

Subscribed and sworn to before me this 18th day of March, A. D., 1943.

DOROTHY LOUISE BUTLER,
-Notary Public, D. C.

My Commission Expires Jan. 31, 1948.

550 AFFIDAVIT OF FRANK L. BEESE

DISTRICT OF COLUMBIA, ss:

I, FRANK L. BEESE, being first duly sworn, on oath, depose and say that I was a member of the jury which returned a verdict in the above case, and I recall that during the deliberations of the jury in the jury room, Alonzo H. Adkins, a member of the jury, in discussing the verdict that should be returned with the juror, Louis Rudden, who had voted in favor of a verdict for the defendants, drew a rough diagram of the intersection of Sixteenth and K Streets, N. W., and told the said Louis Rudden, that he had been by the scene of the accident involved in this case, and he had watched the manner in which the buses would turn to the right off K Street for the purpose of going North on Sixteenth Street, and he stated that the buses that he observed making the said turn, when the light was green for West

bound traffic, would pull out and partly around on Sixteenth Street while the light was green in order to slip through moving West bound traffic, and that none of the bus operators that he observed stopped their buses in the position that the witness, Richardson, said he stopped his bus on the day of the accident while he was awaiting an opportunity to make the turn on the green light at the Northwest corner for West bound traffic; and that the said Adkins argued for what he had observed other bus drivers doing at Sixteenth and K Streets, N. W., that they should throw out or disregard entirely the testimony of the witness, Richardson.

551 After the aforesaid statements made by the said juror, Alonzo H. Adkins, as outlined above, the juror, Louis Rudden, finally changed his vote in favor of the defendants to one in favor of the plaintiffs.

I also depose and say that while the jurors were deliberating on their verdict that the juror, Mildred G. McMillan, stated to me that on Sunday, March 7th, after the case had been on trial for two days, and before the trial had ended, she had gone to the scene of the accident in her automobile, had driven around the block and made a test to see how long it would take her to get from Fifteenth Street to Sixteenth Street, and what the conditions of the lights would be at Sixteenth Street when she reached that point while going West on K Street.

FRANK L. BEESE.

Subscribed and sworn to before me this 16th day of March, A. D., 1943.

PABUT H. McCORMICK,
Notary Public, D. C.

552 AFFIDAVIT OF LOUIS RUDDEN

DISTRICT OF COLUMBIA, ss:

I, LOUIS RUDDEN, being first duly sworn, on oath, depose and say that I was a member of the jury which

returned a verdict in the above case, and I recall that during the deliberations of the jury in the jury room, Alonzo H. Adkins, a member of the jury, in furtherance of his effort to get me to change my vote in favor of the defendants to one in favor of the plaintiffs, drew a rough diagram of the intersection of 16th and K Streets, and told me in the presence of other jurors that he had gone by the scene of the accident involved in this case every day since the trial of the case started since his office was in the vicinity and had checked or watched the manner in which the buses would turn to the right off K Street for the purpose of going North on 16th Street, and he stated that the buses that he observed making the said turn when the light was green for West bound traffic would pull out and partly around on Sixteenth Street while the light was green in order to slip through moving West bound traffic, and that none of them would have stopped in the position that the witness, Richardson, said he stopped his bus on the day of the accident while awaiting an opportunity to make the right turn on the green light at the Northwest corner for West bound traffic, and he argued from what he observed at 16th and K Streets, while the trial was in progress, that we should throw out the testimony of the witness, Richardson. It was after the statement by the said juror, Alonzo H. Adkins, as outlined above, that I finally changed my vote in favor of the defendants to one in favor of the plaintiffs.

LOUIS RUDDEN.

Subscribed and sworn to before me this 17th day of March, A. D., 1943.

ZELDA MEDLEY,
Notary Public, D. C.

554 ADDITIONAL GROUND IN SUPPORT OF
 MOTION TO SET ASIDE JUDGMENT
 AND VERDICT AND GRANT A NEW TRIAL

Since the filing of the motion herein additional information has come to the notice of counsel for the defendant, Lou Orenberg, and the guardian ad litem for Rita Niefeld (nee Homes), and on the basis of this information they assign in support of their motion the following additional ground;—that on the voir dire examination of the prospective jurors, after they had been sworn to truthfully answer the questions propounded, the following questions were propounded by Mr. Quinn,

“Have any of you ever been plaintiffs in a case involving personal injuries in an automobile accident, or any other kind of an accident? Have you ever presented a claim against anyone for personal injuries, whether arising out of an automobile accident, or an accident in a store, apartment house or hotel?”

To the foregoing questions one of the prospective jurors made answer, but the prospective jurors, Daniel A. Bigley and William H. Rinehart, remained silent. After the juror who responded had completed his explanation of a claim which he had presented, Mr. Quinn asked the following question;

“Is there anyone else who has had a claim of any
 555 kind involving personal injuries?”

To which question none of the prospective jurors responded, and the said Daniel A. Bigley and William H. Rinehart remained silent. That by their failure to respond to the questions set forth above the said Daniel A. Bigley and William H. Rinehart led counsel for the defendants to believe that they had never had, or presented a claim against anyone for personal injuries, whereas the fact is that Daniel A. Bigley on June 5th, 1939, presented a claim against the Capital Transit Company for damages resulting

to him because his foot had been caught in the door of a bus and the operator of the said bus had been rude to him. He presented a claim for \$231.25, and the said claim was compromised for \$125.00; and the said William H. Rinehart on July 25th, 1940, presented a claim against the Capital Transit Company because of injuries sustained when a car door of the said Company closed on his leg and hand, and thereafter the said claim was settled for the sum of \$100.00.

And defendants say that by their failure to answer the aforesaid questions propounded to the prospective jurors and to reveal the truth with reference to the claims that they had presented and settled, the said Daniel A. Bigley and William H. Rinehart misled and deceived defendants' counsel and guardian ad litem and deprived them of the opportunity to intelligently and adequately exercise their right to peremptory challenge the names of the said Daniel A. Bigley and William H. Rinehart. Affidavit of counsel in support is hereto attached.

HENRY I. QUINN,
Attorney for Defendant,
Orenberg,
 637 Woodward Bldg.

JOSEPH SITNICK,
Guardian ad litem for
Rita Homes,
 Columbian Bldg.

556 Copy of the foregoing Additional Ground in support of Motion, Affidavit in support and points and authorities were served on plaintiffs' counsel, Dorsey K. Offutt, Esq., this 2nd day of April, A. D., 1943.

HENRY I. QUINN,
Attorney for Defendant,
Orenberg,
 637 Woodward Bldg.,
 733 15th St., N. W.

557 AFFIDAVIT IN SUPPORT OF MOTION

DISTRICT OF COLUMBIA, ss:

I, HENRY I. QUINN, being first duly sworn, depose and say that I am the attorney of record for the defendant, Lou Orenberg; that after the filing of the motion for new trial herein, and while preparing to select the jury in another case, in which I was engaged as counsel for one of the defendants, I received information that indicated that the jurors, Daniel A. Bigley and William H. Rinehart had presented claims against the Capital Transit Company, and had received settlement on the same; that I followed up this information and checked with the representatives of the Capital Transit Company and found that from the records of said Company it appeared that the said Daniel A. Bigley and the said William H. Rinehart had presented claims on the dates set forth in the additional ground in support of the motion to set aside judgment etc., to which this affidavit is attached, and that they settled the said claims for the amounts mentioned therein.

Deponent further says that he propounded the questions set forth in the motion to the prospective jurors on the voir dire clearly and in a strong tone of voice, and has no doubt that all of the prospective jurors heard the questions; that the said jurors, Daniel A. Bigley and William H. Rinehart made no answer to the said questions, and by their silence gave deponent and the guardian ad litem for infant
558 defendant to understand that they had not had or presented a claim against anyone for personal injuries; that had the said Daniel A. Bigley and William H. Rinehart answered the said questions and revealed the fact that they had presented claims against the Capital Transit Company, and compromised the same, that deponent would have peremptorily challenged them by striking their names from the list.

HENRY I. QUINN,

Subscribed and sworn to before me this 1st day of April,
A. D., 1943.

(Notarial Seal) **HELEN R. SASSCER,**
Notary Public, D. C.

* * *

574 IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA

THECKER, Plaintiff,
vs.
ORENBERG, Defendant.

Civil No. 5644.

ORDER OVERRULING MOTION FOR NEW TRIAL

Upon the coming on for hearing of the motion filed herein
by defts.-----, for a new
trial, it is this 14th day of May, 1943, ordered that said
motion be, and the same is hereby overruled.

CHARLES E. STEWART,
Clerk.

By **THOMAS A. ROVER,**
Deputy Clerk.

By direction of
JUSTICE GOLDSBOROUGH.

**BRIEF AND APPENDIX
FOR APPELLEES**

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8594

LOU ORENBERG AND RITA HOMES NIEFELD,
Appellants,

v.

MADELINE THECKER AND GEORGE W. THECKER,
Appellees.

Appeal from the District Court of the United States for the
District of Columbia.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAY 5 1944

Joseph W. Stewart

CLERK

DORSEY K. OFFUTT,
Woodward Building,
Washington, D. C.,

THOMAS A. FARRELL,
Southern Building,
Washington, D. C.,
Attorneys for Appellees.

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8594.

LOU ORENBERG AND RITA HOMES NIEFELD,
Appellants,

v.

MADELINE THECKER AND GEORGE W. THECKER,
Appellees.

BRIEF ON BEHALF OF APPELLEES.

COUNTER STATEMENT OF CASE.

The statement of the case made on behalf of appellants is so inadequate for a consideration of the issues on appeal that it is deemed necessary to make a full statement of the facts in order that this Court may be in an appropri-

ate position to see what was before the Court below. Accordingly, the material facts as shown by the evidence are as follows:

Appellee Madeline M. Thecker, the wife of George W. Thecker also Appellee, was injured while walking within the crosswalk at the intersection of 16th and K Streets, N. W., on April 24, 1939, when she was struck by an automobile owned by Lou M. Orenberg and operated by a sixteen-year-old girl, Rita Homes Niefeld, appellants.

Madeline M. Thecker testified that on April 24, 1939, she got off a bus at the southwest corner of 16th and K Streets, and went east across 16th Street where in front of the Carlton Hotel she saw a sign which read "board buses for 16th Street at the northeast corner." She waited for the green traffic light to get across K Street and then walked to the northeast corner. When she got over to the northeast corner, she turned and saw a Petworth bus which was to go north up Sixteenth Street, stopped on the south side of the safety zone. She looked at the green traffic light on the southwest corner of 16th and K Streets before she stepped off the curb and noticed that traffic was going south on 16th Street. After stepping off the curb and while walking southward toward the bus, she looked at the green traffic light again and saw that it was safe to continue across the street and when she got about midway between the first curb and the safety zone she was struck by an automobile operated westward by Rita Homes Niefeld. The time of the collision was about 4 P.M. She remembered nothing after that until she recovered consciousness in the Emergency Hospital. (Appellees' App. 10-13.)

Appellee Madeline M. Thecker was corroborated in her testimony by many other witnesses. **Donald Russell Shepherd** testified that he was a taxi driver and witnessed this accident while operating his taxicab west on K Street, immediately following the automobile driven by Rita

Homes Niefeld, which struck Madeline Thecker. He saw Appellee Thecker when she left the curb walking south in the crosswalk towards the bus, which was standing waiting on the red light, to make a right turn and proceed north on 16th Street. The light on the northwest corner was red for westbound traffic when appellee stepped off the curb. The appellants' car was travelling between 20 and 30 miles per hour and did not slacken its speed as far as he observed as it approached the intersection. She was walking and was about halfway between the curb and the safety zone when she was struck by appellants' automobile, which knocked her about seven or eight feet from the east curb line of 16th Street. (Appellees' App. 38-43.)

Miss Virgie Yeager testified that she witnessed this accident. She was employed at the Veterans Administration and was on her way home at the time. She saw Appellants' automobile westbound strike appellee Madeline Thecker, when Mrs. Thecker was walking south in the crosswalk and was about halfway between the north curb and the safety zone. Miss Yeager was walking north on the east side of 16th Street on the green light and was stopped when the light turned to red on the northeast corner. The automobile was going about 35 miles an hour when it hit Mrs. Thecker and it knocked her almost to the center of 16th Street. (Appellees' App. 13-25.)

Mrs. Melissa B. Roper, an employee of the Adjutant General's Office, testifies she witnessed the accident while sitting just back of the bus driver's seat on the aforesaid Petworth bus which was stopped just east of the end of the safety zone at 16th and K Streets. She saw an elderly woman walking south from the north curb toward the bus and at that time the light controlling K Street traffic was red on the northwest corner. The bus driver was waiting for the light to change so he could make a right turn and go north on 16th Street. The automobile struck Mrs. Thecker

and her body went up in the air and hit the street close to the middle of 16th Street. (Appellees' App. 25-32.)

Alfred L. Argo, a Metropolitan policeman, testified he investigated the accident in which Mrs. Thecker was injured on April 24, 1939 and the official records of measurements made by him, showed she was struck about six feet north of the safety island and her body was picked up sixteen feet from the point of impact in 16th Street. (Appellees' App. 51-54.)

Beverly B. Burton testified he was riding a bicycle north on 16th Street and was stopped when the light on the northeast corner turned from green to red and just a matter of seconds after that light turned to red, he saw a woman's body going through the air. Her body was knocked about 20 feet and was near some sewer tops in the center of 16th Street. (Appellees' App. .)

The evidence further showed that the physical facts, that is, the light control system at 16th and K Streets, the measurements of the Street, the location of the buildings with the exception of the Statler Hotel which had been built on the site of a private residence, Senator Hale's home, were the same on the day of trial as they were on the day of the accident. The aforesaid physical facts were introduced in evidence by photographs, plats, and other evidence.

After the jury returned a verdict in favor of the appellees, appellants filed a motion for new trial on the ground of alleged misconduct of some of the jurors, supporting it by affidavits of jurors Aires, Beese and Rudden (Appellants Appendix, beginning page 38), as well as by an affidavit of counsel for appellants (Appellants Appendix 44). The appellees in opposition to such motion filed points and authorities and also affidavits of the aforesaid jurors Gregory J. Aires and Frank L. Beese, and in addition affi-

davits of jurors Rinehart (foreman) and Bigley and adduced testimony of Henry I. Quinn, Esq. (Appellees' App. 3-9.) The affidavits filed by the appellees tended to controvert and did controvert the matters and things set forth in the appellants' motion. The Court's attention is invited to the fact that the Appellants' affidavits do not support the inferences drawn from them by the appellants in their statement of the case. (Appellants' App. 38-41.)

The Court below, after a hearing and full argument, in the exercise of its discretion overruled the motion. This appeal followed.

SUMMARY OF THE ARGUMENT.

1. Practice of attempting to have jurors impeach their verdict not favored by the courts.

2. Testimony of jurors not received to impeach verdict unless it relates to extraneous influences brought to bear upon them, and instant case falls within such rule.

3. Refusing new trial under circumstances in instant case matter within sound discretion of Court and not reviewable.

4. There was no misconduct of the jurors in any respect and no prejudice resulted to appellants from any action of any juror.

ARGUMENT.

The practice of seeking out jurors and cross examining them to see whether or not something may be found out upon which a motion for a new trial may be based, is not at all favored by the courts, and indeed the practice of inviting jurors to attempt to impeach their verdict by affidavits made subsequent thereto, should be discouraged. Such practice is more conducive to mischief than to truth; and if sanctioned the courts would soon be trying jurors instead of litigants. Long ago the Supreme Court of the

United States considered this matter in the case of *McDonald v. Pless*, 238 U. S. 264, 59 L. Ed. 1300, and said:

“When the affidavit of a juror as to the misconduct of himself or the other members of the jury is made the basis of a motion for a new trial, the Court must choose between redressing the injury of a private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what happened in the jury room. But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication, and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation the constant subject of public investigation, to the destruction of all frankness and freedom of discussion and conference.”

And in an early case in this District, *Cherry v. Sweeny*, 1 Cranch C. C. 530, Fed. Cas. No. 2641, one of the jurors gave information of his own knowledge, after the jury had retired, namely, that he had heard from the defendant and plaintiff, that the defendant was not to be allowed anything for the services of her son; which was a claim for set-off which she had attempted to prove at the trial. A new trial was refused, the court being of the opinion that substantial justice had been done, and doubting the policy of giving an easy ear to affidavits of this kind.

The instant case falls within the foregoing principle.

The rule firmly established by decisions of the Supreme Court of the United States as well as those of this Court is that testimony of jurors will not even be received to impeach their verdict unless such testimony relates to extraneous influences brought to bear upon them. *Economon*

v. Barry-Pate Motor Co., 55 App. D. C. 143, 3 Fed. (2d) 84; *Mattox v. United States*, 146 U. S. 140; *McDonald v. Pless*, 238 U. S. 264, 59 L. Ed. 1300; *American Security & Trust Co. v. Kaveney*, 39 App. D. C. 224, 228; *Washington Times Company v. Bonner*, 66 App. D. C. 280, 292; 86 F. (2d) 836.

The instant case falls within the general rule announced above. There was no extraneous influence brought to bear upon the jurors, such as communications made by third persons to one of the jurors or statements by court attaches to the jurors as was the case in *Mattox v. United States*, *supra*. The affidavits of some of the jurors attached to the motion of the appellants in the court below relate to the deliberations of the jury. Under such circumstances the rule of the courts is clear in this jurisdiction as well as in the federal courts generally that such affidavits ought not really to be received. Furthermore, the granting or refusing of a new trial under the circumstances alleged in the affidavits submitted by the appellants is a matter within the sound discretion of the court. No appeal will lie except upon a showing of clear and conclusive abuse of such discretion. *Buckeye Powder Co. v. E. I. Dupont de Nemours Powder Co.*, 223 Fed. Rep. 881; *Washington Times Co. v. Bonner*, *supra*; *Economon v. Barry-Pate Motor Co.*, *supra*; *Roberts v. United States*, 4 Cir., 60 F. (2d) 871; *Brown v. New York Indemnity Co.*, 39 Fed. (2d) 443.

The trial court below not only received the affidavits and testimony but also after full argument, considering all the circumstances, in the exercise of its discretion, denied the motion for a new trial. It is respectfully submitted that such action of the trial court was proper, and the appeal should therefore be affirmed. (Appellants' App. 3-9.)

Furthermore, an unauthorized view or inspection by a juror is not a ground for a new trial. *Roberts v. United States*, *supra*; *People v. Kraus*, 265 N. Y. S. 294. The view of the scene of the accident alleged in the affidavits filed on behalf of the appellants, even if it actually occurred, is not a ground for a new trial. *Elmore v. Des Moines Railway Co.*

(Iowa), 224 N. W. 28; *Friedman v. Ralph Bros. Inc.*, 314 Pa. 247, 171 Atl. 900.

Having in mind the principles enunciated in the above-mentioned cases, let us turn to the consideration of what appellants' affidavits set forth. It is to be observed that these affidavits really touched no matter that was in dispute. There was no dispute as to the place of the accident, no dispute as to the condition at the site of the accident, the question of the street corner, the measurements of the street, the lights, and all kinds of conditions generally, were not involved, and the physical aspect of the intersection was not a matter in dispute. Thus, even an unauthorized view of the scene of the accident would not be a ground for a new trial because it did not involve any matter in dispute and therefore could not supply any extraneous matter. (Appellants' App. 38-41.)

Next, it is said that the juror in question, after having visited the scene of the accident, observed the manner in which bus drivers drove or turned at the intersection. From this it was determined that a bus driver on another occasion long prior thereto must not have waited until four or five cars passed ahead of him when the red light had changed to green. But the bus company was not a defendant in this case, and it was immaterial how bus drivers made their turns. A juror is entitled to rely on common knowledge and experience which applies not only at this corner but also at all other intersections throughout the city and generally. It does not take observation of a bus driver at a particular corner to show that the interval between the time when the green light goes on and the man behind you blows his horn is almost nil, and jurors may draw upon their intelligence, common sense, experience and knowledge in considering the bus driver Richardson's testimony. The appellants' affidavits as to the juror relate only to a collateral matter involving partially the credibility of one of the witnesses, a bus driver. The testimony of the bus driver was disputed by other evidence in the case from which the

jury would have been justified in rendering the verdict which it did and in disregarding the testimony of the bus driver himself or in considering that other evidence in the case sustained the contentions of the appellees rather than those of the appellants regarding the traffic light on the northwest corner. Furthermore, the cross-examination itself of the bus driver warranted the jury to disregard his testimony as being biased, unreliable and incredible. Under these circumstances, the appellants' affidavits of the jurors as to the action of the juror in question, relating as it does to an immaterial matter on a fact not in dispute, are inconsequential.

There was ample other evidence both to discredit the bus driver and to sustain the verdict independent of the bus driver's testimony.

The attention of the Court is particularly invited to the affidavits of jurors Aires and Beese as filed on behalf of the appellees as contrasted with affidavits of those same jurors filed on behalf of the appellants.

It is to be seen from all of the affidavits that there was no misconduct of the jury or any of the jurors; there was no misconduct on the part of any juror which would affect the verdict or influence any juror in arriving at his verdict; that the verdict was rendered upon a full and fair consideration of all of the evidence and without prejudice.

Moreover, it is quite clear from these affidavits, particularly those of Bigley and Rinehart, who are asserted by appellants to have failed to answer certain questions on voir dire, that such jurors answered truthfully all questions as they understood them and as any ordinary layman would have so understood them in the manner and form propounded by counsel for appellants.

It is to be observed that the affidavit of juror Aires which appellants filed (Appellants' App. 38) has no significance whatsoever in law. It does not say that he, himself, was affected upon any matters set forth therein and seeks to imply something concerning the state of mind of another

juror, but nevertheless uncommunicated to him, juror Aires.

The affidavit of juror Beese filed on behalf of appellants (Appellants' App. 39) is of the same character in respect to the state of mind of juror Rudden as the above mentioned affidavit of juror Aires. In addition Beese's affidavit makes mention of an utterly insignificant automobile trip of juror Mildred G. McMillan.

The affidavit of Rudden himself does not state or suggest that he was influenced by or rendered his verdict on account of the matters and things mentioned therein. It merely states as a chronological fact that after the statement of juror Atkins, he finally changed his vote. How long afterwards and what the circumstances were under which he changed his vote are not disclosed.

Moreover, jurors have a right to draw upon their common knowledge and experience and it is probably true that no jury in a contested case arrives at a verdict without some of the jurors calling upon and asserting their individual ideas and opinions upon a matter submitted to them. They may apply their general knowledge and experience to the examination of the case and in estimating the weight of the evidence, and may call to the aid in so doing their personal knowledge, learning and experience as well as matters of general observation or common knowledge. 46 *Corpus Juris* (New Trial, Section 120), page 154; *Chicago, etc. v. Moore*, 166 Fed. C. C. A. 663.

The affidavits filed by appellants even standing alone show there was no statement of a positive fact within the peculiar knowledge of anyone, but on the contrary could only be in effect a mere statement of opinion. There was no statement of a fact alleged to have occurred at the time involved in the suit, which is most important. Thus there was nothing shown even on the bare affidavits filed by the appellants to justify the lower court in its discretion to grant a new trial, let alone as controverted by appellees' affidavits. *Hulett v. Hancock*, 66 Kan. 519, 71 Pac. 224; 39 Amer. Juris., pp. 94, 95 (sec. 80).

Moreover, it must be shown that the verdict was affected by such statement and that prejudice resulted. 39 Amer. Juris., pp. 94, 95 (sec. 80). And where the verdict is correct on all the evidence—as it clearly is in the instant case—and as the affidavits of all the jurors make manifest, new trial should have been refused and an appeal denying the same should be affirmed. *Cherry v. Sweeney*, 1 Cranch C. C. 530, 1 D. C. 530; *Henry v. Rickess*, 1 Cranch C. C. 544, Fed. Cas. No. 6385; *Brown v. New York Indemnity Company*, (8 Cir.) 39 Fed. (2d) 443; *Buckeye Powder Company v. E. I. Du Pont De Nemours P. Co.*, (3 Cir.) 223 Fed. 881; *Union Electric Light & Power Company v. Snyder Estate Company*, 15 Fed. Supp. 379; *Hathaway v. Burlington*, 97 Iowa 747, 66 N. W. 892; *Davis v. Lorenzo's Inc.*, 16 N. Y. S. (2d) 624; *Economon v. Barry-Pate Motor Co.*, *supra*.

Finally, the suggestion of appellants that one or more of the jurors failed to answer certain questions on their voir dire examination is without merit. The fact that a juror failed to answer a question, the answer to which would have caused defendant to challenge him peremptorily is not ground for a new trial. *Union Electric Light & Power Company v. Snyder Estate Company*, 15 Fed. Supp. 379, 383. *Powell v. State* (Tex. C. R.) 187 S. W. 334; *Dodd v. State*, 72 S. W. 1015; *Raub v. Carpenter*, 187 U. S. 159; 47 L. Ed. 119; *Paolucci v. U. S.*, 30 App. D. C. 217, citing cases, *certiorari denied* 208 U. S. 617; *U. S. v. Rosenstein*, 34 (Fed.) 2d. 634; 39 American Juris. 59; *Southern Traction Company v. Wilson*, 241 S. W. 636.

The affidavits of the jurors involved (Rinehart and Bigler)—(Appellees' App.) clearly explain the circumstances satisfactorily aside from the principles of law enunciated in the authorities cited immediately above. It is obvious that counsel must exercise due diligence in making the questions plain to lay jurors. This was not done as is clear from the record. There was no willful misstatement or false answer on the part of any juror.

As the Court said in *Union Electric Light & Power Company case, supra*,

“There is no showing that the non disclosure (it was not a non disclosure resulting from any improper motive) prejudiced defendants.”

The cases cited by appellants in their brief are largely state cases, which are of no value in view of the considerable number of decisions in the Supreme Court, this Court and other Federal courts to the contrary. An examination of the few Federal decisions cited by appellants will show either that the cases are actually in favor of the position of the appellees or that the facts are so dissimilar as not to be in point.

CONCLUSION.

It is respectfully submitted that the appellants had a fair and impartial trial; that the verdict of the jury was right on all the evidence; that there was no prejudicial conduct on the part of any juror; that there was no misconduct on the part of any juror; that in the exercise of its discretion the lower court from a consideration of all the law and facts before it, including all of the above mentioned affidavits, found there was no misconduct on the part of any juror and no such misconduct as would justify the granting of a new trial; that the action of the trial court was correct and that manifestly there was no abuse of discretion in so ruling; that the exercise of such discretion by trial court should not be reviewed, and according that the judgment should be affirmed.

Respectfully submitted,

DORSEY K. OFFUTT,
Woodward Building,
Washington, D. C.

THOMAS A. FARRELL,
Southern Building,
Washington, D. C.
Attorneys for Appellees.

APPENDIX

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8594.

LOU ORENBERG AND RITA HOMES NIEFELD,
Appellants,

v.

MADELINE THECKER AND GEORGE W. THECKER,
Appellees.

Appeal from the District Court of the United States for the
District of Columbia.

APPENDIX TO BRIEF FOR APPELLEES.

543

Filed March 9 1943

Verdict and Judgment

This cause having come on for hearing on the 3rd day of March, 1943, before the Court and a jury of good and lawful persons of this district, to wit:

Louis Rudden
Gregory J. Aires
James A. Jackson
Edward A. Joyner Jr.
Amy D. Crippen
Mildred G. McMillan

William H. Rineheart
Joseph M. Naiman
Albert L. Miller
Alonzo H. Adkins
Daniel A. Bigley
Frank L. Beese

who, after having been duly sworn to well and truly try the issues between Madeline Thecker, plaintiff and Lou Orenberg and Rita Homes Niefeld, defendant, and after this cause is heard and given to the jury in charge, they upon their oath say this 3rd day of March, 1943, that they find the issues aforesaid in favor of plaintiff and that the money payable to her by the defendants by reason of the premises is the sum of \$6,000.

Wherefore, it is adjudged that said plaintiff recover of the said defendants the sum of six thousand dollars (\$6,000) together with costs.

CHARLES E. STEWART,
Clerk.

By THOMAS O. ROVER,
Deputy Clerk.

By direction of
JUSTICE GOLDSBOROUGH

* * * * *

544

Filed Mar 9 1943

Verdict and Judgment

This cause having come on for hearing on the 3rd day of March, 1943, before the Court and a jury of good and lawful persons of this district, to wit:

Louis Rudden	William H. Rineheart
Gregory J. Aires	Joseph M. Naiman
James A. Jackson	Albert L. Miller
Edward A. Joyner Jr.	Alonzo H. Adkins
Amy D. Crippen	Daniel A. Bigley
Mildred G. McMillan	Frank L. Beese

who, after having been duly sworn to well and truly try the issues between George W. Thecker, plaintiff and Lou Orenberg and Rita Homes Niefeld, defendant, and after this

cause is heard and given to the jury in charge, they upon their oath say this 9th day of March, 1943, that they find the issues aforesaid in favor of the plaintiff and that the money payable to him by the defendants by reason of the premises is the sum of \$1,500.

Wherefore, it is adjudged that said plaintiff recover of the said defendants the sum of Fifteen hundred dollars (\$1,500) together with costs.

CHARLES E. STEWART,
Clerk.

By THOMAS O. ROVER,
Deputy Clerk.

By direction of
JUSTICE GOLDSBOROUGH

* * * * *

Henry I. Quinn, Esq., was called as a witness, in opposition to motion for new trial, and testified as follows:

560 Direct Examination

By Mr. Offutt:

Q. Mr. Quinn, how long have you been practicing law in the District of Columbia? A. Almost so long that the memory of man runneth not to the contrary; since 1905.

Q. When this case was tried and the jury had returned with its verdict in the case which we are now arguing the motion upon, did you go outside of the courtroom and tell the members of the jury or any one of them that the
561 defendants were not covered by insurance? A. Oh, yes.

Q. You did? A. Yes.

Q. Previous to that time? A. After the case was over.

Q. After the verdict was returned you followed them out and told them that? A. No. I met a juror in the hall.

Q. The same day of the trial; is that correct? A. That is right.

Q. At the bench and out of the presence of the jury the Court had ruled on your motion to present testimony to the jury to show that the defendants were not covered by insurance; is that correct? A. That is correct.

Q. You knew that at the time? A. Surely.

Q. Will you explain to the Court why you went out and told the jury after the verdict was returned that the defendants were not covered by insurance? A. Because from what the jurors said. I got the impression he said he thought they were.

Q. Is that the only reason? A. That is right.

Q. That was before you had obtained any affidavits from any juror? A. That is right.

Q. Which juror did you meet in the hall and tell
562 that to? Do you know who by name? A. I think it was Mr. Bigley.

Q. Mr. Bigley? A. I think so.

Q. Now, did you also tell Mr. Rudden that the defendants were not covered by insurance? A. When I got the affidavit from Rudden?

Q. Yes, sir. A. Yes.

Q. Your answer is "yes"? A. Yes.

Q. And that was before you got the affidavit, wasn't it? A. It was. Well, I could not tell you whether it was before the affidavit or not.

I spoke to Rudden first on the telephone. Whether at that time, between the time of the telephone call and the time of the affidavit, or at the time of the affidavit, I don't know.

Q. Then after you talked to Mr. Rudden you had an affidavit prepared, and you sent the affidavit in prepared form to Mr. Rudden to be signed?

You sent it by Mr. Galiher of your office? A. That is right, and Mr. Rudden made some change in it and signed it.

Q. And that change is written in on the original affidavit? A. That is right.

Q. Now, did you know that Mr. Rudden was the last juror and the only juror who was voting for the defendant just before the verdict was returned? A. He told me
563 that he was the last one to come over.

Q. And you knew that before you obtained the affidavit? A. Oh, yes; yes.

Q. Of course, the language of the affidavit that Mr. Rudden signed was your language? You didn't write down what he said in shorthand, or exactly as he said it, did you? A. No. He told me what occurred, and I wrote it down as I understood it, sent it to him, and he made whatever change he wanted to, and then he signed and swore to it.

Q. What question was it that the juror asked you that made you think that you should tell him that the defendants were not insured—that is, Mr. Bigley? A. I could not for the life of me tell you what the exact language was. It was something that he said.

Q. What reason did you have for telling Mr. Rudden that the defendants were not insured? A. I believe Mr. Rudden asked me, but I am not sure of that. I am not sure about that.

Mr. Offutt: I think that is all.

(Thereupon the witness was excused and retired from the witness stand.)

* * * * *

568

Filed Apr 12 1943

Affidavit of William H. Rinehart

District of Columbia, ss:

I, William H. Rinehart, being first duly sworn on oath according to law, depose and say: I was the foreman of the jury in the above-entitled case, which, on March 9, 1943, returned the verdict in favor of the plaintiffs, Madeline Thecker and George W. Thecker, in the total amount of \$7,500 against the defendants, Lou Orenberg and Rita

Homes Niefeld, in the court of Mr. Justice Goldsborough. During the deliberations by the jurors in the jury room the first poll of the jury showed that the jurors were 10 to 2 in favor of a verdict for the plaintiffs. One of the two jurors who had not voted for the plaintiffs decided to vote for the plaintiffs, leaving the count 11 to 1 in favor of the plaintiffs. The one remaining juror, namely, Louis Rudden voting for the defendants, stated that because there were eleven jurors voting in favor of a verdict for the plaintiffs and he was the only juror voting in favor of the defendants, that he would change his vote from one in favor of the defendants to one in favor of the plaintiffs, thus making the final vote of the jurors unanimous in favor of a verdict for the plaintiffs and against the defendants.

The verdict of the jury was reached after careful deliberation and consideration of the case by the members of the jury and there was no coercion on the part of anyone.

At no time during the consideration of the case by the jurors did Juror Adkins state that he had visited the scene of the accident for the sole purpose of observing the operation of the lights or any other conditions there.

Juror Adkins stated that he was employed near 18th and L Streets, N. W., and that he was familiar with the intersection and knew about the operation of the lights at that intersection.

569 I did receive the sum of \$100.00 from the Capital Transit Company for injuries received by me about July 25, 1940, but I never presented a claim to them. A representative of the Capital Transit Company communicated with me and requested me to contact the Company after I had fully recovered from my injuries and that I would be reimbursed for any expenses I had incurred. And I did not understand that Mr. Quinn in questioning the panel before the jury was selected and sworn, was asking for this type of information.

After the unanimous decision of the jurors to find for the plaintiffs, the jurors discussed the question of damages

only, and all the jurors voluntarily agreed to return a verdict of Six Thousand (\$6,000.00) Dollars for the plaintiff, Madeline Thecker, and One Thousand Five Hundred (\$1,500.00) Dollars for the plaintiff, George W. Thecker against both defendants.

WILLIAM H. RINEHART.

Subscribed and sworn to before me this 11th day of April, 1943.

(Seal) THERESE M. TANGORA,
Notary Public, D. C.

My commission expires January 14, 1946.

* * * * *

570

Filed Apr 12 1943

Affidavit

District of Columbia, ss:

I, Daniel A. Bigley, being first duly sworn on oath according to law, depose and say: I was a member of the jury panel which returned a verdict for both plaintiffs against both defendants in the above entitled case, before Mr. Justice Goldsborough on March 9, 1943. Before the jury was selected and sworn when Henry I. Quinn, Esquire, counsel for the defendants, was questioning the prospective jurors, I understood from his questions that he wanted to know the members of the jury who had filed suits for damages in court, and I did not understand that he wanted to know by his questions whether anyone had received money for damages without going to court. It was the first time I had served on the jury. I was not biased or prejudiced against the defendants in any way. My verdict was based upon the evidence and was a fair one. After the verdict

was returned in court by the jury, Mr. Quinn stated that the defendants were not covered by insurance.

DANIEL A. BIGLEY.

Subscribed and sworn to before me, this 7th day of April,
A. D. 1943.

(Seal) THERESE M. TANGORA,
Notary Public, D. C.

My commission expires 1/14/46.

* * * * *

571

Filed May 14 1943

Affidavit of Gregory J. Aires

District of Columbia, ss:

I, Gregory J. Aires, being first duly sworn on oath according to law, depose and say: That I was a member of the jury which returned a verdict in the total amount of \$7,500 on March 9, 1943, in favor of the plaintiffs in the above-entitled case in the court of Mr. Justice T. Alan Goldsborough. After the verdict had been returned, Mr. Henry I. Quinn, one of counsel for the defendants, came to my place of business and talked with me about the deliberations of the jury in the jury room. After he had talked with me about the deliberations of the jury in the jury room, a gentleman stating he was from Mr. Quinn's office called at my place of business with an affidavit which was already typed up. After the discussion in the jury room between Mr. Adkins, a member of the jury, and Mr. Rudden, another member of the jury, a poll was made to see how the jury stood. At that time I had voted for the plaintiffs. The count stood 11 to 1 in favor of the plaintiffs. Mr. Rudden asked, as nearly as I can recall it, "Am I the only one voting in favor of the defendants?" Several jurors said, "Yes". Mr. Rudden then said, "Well, then, I will join the rest of the jurors and vote in favor of a verdict for

the plaintiffs." Thereafter the discussions of the jury were concerned primarily with the amount of damages to be awarded to both plaintiffs against both Defendants. When the affidavit was presented to me for signing, I signed it, but the facts set forth therein did not influence me or affect my verdict in any way whatsoever. During the deliberations of the jury, the case was discussed fully by the members of the jury in the jury room, and the verdict was agreed upon voluntarily and unanimously by all of the members of the jury before the verdict was returned in the court room. The verdict as agreed upon by the jury was in the amount of \$6,000 for the plaintiff, Madeline Thecker, and \$1,500 for the plaintiff, George W. Thecker, making a total verdict in the amount of \$7,500 for both plaintiffs against both defendants. The verdict represented my true verdict, and it was a fair verdict as agreed upon by all of the members of the jury panel.

GREGORY J. AIRES.

Subscribed and sworn to before me this 14th day of April, 1943.

DOROTHY LOUISE BUTLER,
Notary Public, D. C.

(Seal)

My commission expires Jan. 31, 1948.

DORSEY K. OFFUTT
Atty for Defdt.
Woodward Bldg.

* * * * *

573

Filed May 14, 1943

Affidavit of Frank L. Beese

District of Columbia, ss:

I, Frank L. Beese, being first duly sworn on oath according to law, depose and say: That I was a member of the jury which returned a verdict in the total amount of \$7,500

on March 9, 1943, in favor of the plaintiffs in the above-entitled case, in the court of Mr. Justice T. Alan Goldsborough. On Tuesday, March 16, 1943, Henry I. Quinn, Esq., one of counsel for the defendants, came to my place of employment with a prepared affidavit which he asked me to sign. I signed the said affidavit, but at the same time advised Mr. Quinn that the facts set forth therein did not influence me or affect my verdict in any way whatsoever. During the deliberations of the jury, this case was discussed fully by the members of the jury in the jury room, and the verdict was agreed upon voluntarily and unanimously by all members of the jury before the verdict was returned in the court room. The verdict agreed upon by the jury was in the amount of \$6,000 for the plaintiff, Madeline Thecker, and \$1,500 for the plaintiff, George W. Thecker, making a total verdict of \$7,500. The verdict represents my true verdict, and it was a fair verdict as agreed upon by all members of the panel.

FRANK L. BEESE.

Subscribed and sworn to before me this 17th day of March, 1943.

LEWIS E. THOMAS,
Notary Public.

(Seal)

My commission expires October 31, 1946.

DORSEY K. OFFUTT
Woodward Bldg.
Atty. for Defdt.

* * * * *

Mrs. Madeline Thecker, testified as follows:

82 By Mr. Offutt:

Q. I show you now Plaintiff's Exhibit No. 3, and will you just take this pen and mark the point where you were standing on the north curb when you saw the light? A. Right there (indicating).

Q. Now, you have just indicated to Mr. Quinn that this

lady, whose picture is on the photograph here, is in about the same position you were when you last remember being struck? A. Yes.

Mr. Quinn: That is the same number? No. 3?

Mr. Offutt: This is No. 3, yes sir.

By Mr. Offutt:

Q. Now, will you tell us where the bus was on that picture? A. About there (indicating).

Mr. Quinn: She has her finger on the taxicab, let her mark that, too.

Mr. Offutt: All right.

The Witness: That was a little old Petworth bus.

By Mr. Offutt:

Q. Where was the front of the bus? A. About like that.

Q. Was it about in the same position as the automobile?

A. Just about like that.

83 Q. Will you mark that with a pen. Just put a letter B on that.

* * * * *

Mr. Offutt: (Exhibiting Plaintiff's Exhibit No. 3 to the jury), The witness indicated that this lady who is across here, is about in the same position she was when she was struck, and that the bus was about in the position where the taxicab is, and the cross-mark on the curb is about where she was standing before she started across.

84 By Mr. Offutt:

Q. As you started across the street, did you notice any traffic moving? A. South.

Q. South. A. South down 16th Street, traffic was—

Q. (interposing): Were you running or walking? Were you running or walking? A. What? The traffic?

Q. When you were crossing? A. Who, me? I was walking.

Q. Now, I show you Plaintiff's Exhibit 5 and 6 and ask you if you will look at them; do they represent—just glance

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FRANK L. BEESE.

Subscribed and sworn to before me this 17th day of March, 1943.

LEWIS E. THOMAS,
Notary Public.

(Seal)

My commission expires October 31, 1946.

DORSEY K. OFFUTT
Woodward Bldg.
Atty. for Defdt.

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Q. Now, you have just indicated to Mr. Quinn that this

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Mr. Quinn: That is the same number? No. 3?

Mr. Offutt: This is No. 3, yes sir.

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Q. South. A. South down 16th Street, traffic was—

Q. (interposing): Were you running or walking? Were you running or walking? A. What? The traffic?

Q. When you were crossing? A. Who, me? I was walking.

Q. Now, I show you Plaintiff's Exhibit 5 and 6 and ask you if you will look at them; do they represent—just glance

at both those photographs, 5 and 6. Do they represent the building on the northeast corner of 16th and K on the day of that accident (handing Exhibits Nos. 5 and 6 to the witness). A. Yes.

Q. And does that show the general condition of the safety zone or separation island, and the other physical conditions of the street? A. Yes.

Mr. Offutt: I offer these in evidence. I will show them to Mr. Quinn. Excuse me.

The Court: The Court will take a 5-minute recess.

85 (Thereupon, a short recess was had, following which this then occurred.)

Mr. Offutt: If your Honor, please, I offer exhibits Nos. 5 and 6 in evidence, showing the building on the northeast corner and the general physical facts at the intersection.

The Court: Admitted.

(Thereupon, the photographs above referred to were received in evidence as Plaintiffs' Exhibits Nos. 5 and 6, respectively.)

Mr. Offutt: The pictures show the general condition on April 24, 1939, according to the witness.

Mr. Quinn: What do you mean by "general conditions"?

Mr. Offutt: The building.

Mr. Quinn: The building. Of course, it does not show automobiles or anything like that?

Mr. Offutt: Just the building and the street and separation island.

I might as well offer these other pictures at the same time, two and four if your Honor please, in addition to Nos. 5 and 6, just to show the curb line.

The Court: Very well.

(Thereupon, the photographs just described were received in evidence as Plaintiffs' Exhibits Nos. 4 and 5, respectively.)

* * * * *

139 (Thereupon counsel repaired to the trial table and in the hearing of the jury this then occurred.)

The Court: Ladies and gentlemen, it has been reported to the Court that the plaintiff, the male plaintiff, the gentleman out there, who is somewhat advanced in years, is not feeling well, and his testimony being short anyhow, and merely corroborative, the Court thought it would not be necessary for him to take the stand. The Court thought you out to know why, and that is the reason he is not taking the stand.

* * * * *

181 Direct Examination

Miss Vergie D. Yeager, called as a witness for appellees, testified as follows:

Direct examination

By Mr. Offut:

Q. Will you state your full name? A. Miss Virginia D. Yeager.

Q. Miss Yeager, tell me where you live. A. At the Prince George Hotel, 14 E. 28th Street, New York.

Q. In 1934,—1939, in the month of April, where did you live? A. At the Presidential, 1026 16th Street, Washington.

Q. See if you can speak just a little louder. A. I will try.

Q. And at that time were you employed in the Veterans' Administration in the law library section? A. Yes.

Q. And 1026 16th Street is in the first block north of K, between K and L? A. Between K and L.

Q. Now, do you know either one of the plaintiffs in this case? This is Mr. George Thecker and this is Mrs.

182 Madeline. A. No.

Q. Have you personally ever seen them like you have in Court today, like this? A. I did not know that that was she.

Q. You did not know? A. Now, on April 24, 1939, did you witness an accident which occurred at 16th and K

Streets, Northwest, in Washington, D. C., when an automobile westbound struck a woman, a pedestrian, while she was crossing the street? A. Yes, I did.

Q. Did you work that day? A. Yes, I did. At the Veterans' Administration.

Q. And what time of day was it? A. I was out of work at four, and always at home by ten minutes after.

Q. Now, where were you at the time you saw this accident? A. I was at the corner. I had just passed the Carlton at 16th and K.

Q. You were then on the east side of 16th Street? A. Yes, sir.

Q. And, as you reached the intersection, what was the condition of the light controlling pedestrians, who were walking as you were? A. I was going up 16th. I will tell you how it was.

183 Q. All right. A. I got to the corner and the green light, I was going north, and the green light was on. I walked to the first platform and the red light came on, and I stopped there.

Q. What light were you looking at at that time? A. I was looking at the light going north.

Q. And what corner was that on? A. I was on the southeast corner, and I was looking at the northeast corner of 16th Street.

Q. So that the light that you were looking at which turned red, was on the corner where the Statler Hotel is now located? A. Yes.

Q. Tell us what you observed then? Did you see this woman who was struck at that time? A. Yes.

Q. And where was she at that time? A. She stepped off the platform, I mean off the sidewalk, right on the northeast corner of 16th Street, coming towards the bus stop, towards the bus, evidently to get the bus at the platform going up 16th.

Q. And there was a bus at the platform then? A. Yes, the bus was just stopping at that platform.

Q. And was the light still red ahead of you at that
184 time? A. The light was red ahead of me, but the
back light was green.

Q. And the back light, what do you mean by that? A.
The south light.

Q. Now, what corner is that? Is it on the same side of
the street as the Carlton or on the other side of the street?

A. It is on the other side of the street.

Q. That would be on the southwest corner? A. Yes.

Q. Now, I will show you this photograph, which is
marked Plaintiff's Exhibit 3, and ask you if that photo-
graph shows the corner of the intersection as you remem-
ber it on that day? That is the street, and the lanes, and
the curb lines, and the zones, and the platforms you men-
tioned (handing said exhibit to witness). A. (After in-
specting exhibit referred to). I was here (indicating).

Q. Now, will you take this pen and mark a "Y", your
last initial where you say you were standing? A. Right
in front of that light.

Q. Now, will you place a "Y" where you say the lady
stepped off the curb? A. She was across the street, di-
rectly across the street on this sidewalk (indicating).

Q. And that is where the lady was as you saw her
185 stepping off the curb? A. Yes.

Q. Was the light still red ahead of you when you
stepped off the curb? A. Yes.

Q. Where was the bus stopped? A. The bus stopped
here (indicating).

Q. You have indicated it was nearer 16th? A. Between
the two platforms.

Q. The bus was in the center part of the street, you are
indicating there? A. Yes.

Q. You were south of the platform, and you are refer-
ring to the north of the platform? A. Yes.

Q. And there is a taxicab in the photograph, and you are
indicating that it was stopped about where the taxicab is?
A. Yes.

Q. And will you tell us where the front end was? A. You mean of the bus?

Q. Of the bus? A. It was approximately where the taxicab is.

Q. And you notice that taxicab has a little cross on it. Is that the one you are speaking of? A. Yes.

186 Mr. Offutt: I will show your Honor that mark and then I will show it to the jury.

By Mr. Offutt:

Q. That light on the corner where you say the lady stepped off, that you referred to, was red? A. Yes, red.

Mr. Offutt: Mr. Quinn, do you wish to see this before I show it to the jury?

Maybe I can show it to the jury in a group better than passing it. Can you see this? The "Y" here is where Miss Yeager says she was standing. That is right over here on the northeast corner, which she says was red, and the "Y" here is where Miss Yeager says the lady stepped off, and this is about where the front of the bus was with the front end where the taxicab is. (Exhibiting Plaintiff's Exhibit 3 to the jury.)

By Mr. Offutt:

Q. Now, did you observe any cars parked at the curb on the north side of 16th, between the curb and the platform?

A. There were some cars parked next to the curb about the old Hale house, between that platform and the sidewalk.

Q. I show you that which is marked Plaintiff's
187 Exhibit 5 and ask you if that shows the old Hale, is it, Hale or Hare? A. I think it was the late Senator Hale's mansion, and they were parked just as they are there.

Q. Just as they are in that photograph? A. Yes. I don't know how many, but they were parked along in that position.

Q. Did you see the car which struck the lady at that time? A. The car that struck her, when she stepped off,

was probably about at that alleyway. There was an alleyway to the entrance to the back of that house.

Q. When she stepped off the curb, you say the car was approximately there (indicating)? A. About back there.

Q. Will you make a mark where you say the car was when she was stepping off? A. About there (indicating).

Q. And that is where the car was that struck her? A. Yes.

Q. Was there any other car ahead of that car at that time? A. No.

Q. Did any other car go across 16th Street at that time? A. No.

188 Mr. Quinn: Let me see that alleyway she is talking about.

The Witness: It was an entrance-way, a gateway, behind that house.

Mr. Offutt: I will show this to the court and then the jury.

Members of the jury, I will just let you pass it among yourselves. This "Y" there is back of the house, and as you see it, where there appears to be a little driveway, and she says at that time, the automobile bearing Pennsylvania tags was at that point when Mrs. Thecker stepped off the curb. Can you all see that? I will just leave it with you and you can pass it along.

By Mr. Offut:

Q. Now, Miss Yeager, when you saw the car, the Pennsylvania car, coming in that position, as the lady stepped, the plaintiff in this case stepped off the curb, will you tell us what happened and what you saw? A. She came across, and I would say she was probably, she was more than half-way across, and the car was coming fast—

Q. (Interposing) How fast? Can you estimate the speed? A. I do not own a car and I have not driven.

Q. Have you ridden in automobiles? A. But from
189 my knowledge in riding in a car I would say prob-

ably it was 35 miles. It was coming faster than the usual traffic.

Q. Tell us what happened? A. It hit her.

Q. And you say she was better than halfway across? A. Yes.

Q. And what happened when it hit her? A. It threw her about as high as the hood of the machine in front, and it knocked her over into 16th Street, I would say almost to the center of 16th Street, on her face; she probably hit and slid part of the way.

Q. Is that the way you saw it? A. Yes.

Q. What happened to the car after it struck her? A. The car went all the way to the end of the curb.

Q. When you say all the way to the end of the curb, do you mean here (indicating)? A. You see there is a white line where it should stop, and it went past the white line.

Q. Showing you again Plaintiff's Exhibit 3, is that the white line in the picture here (indicating)? A. Yes. It should stop back here, but the automobile went all the way to the end of this platform before it stopped.

Q. And looking at this white line, was the woman
190 who was struck east of that white line or west of that white line when she was struck? A. West, towards 16th Street.

Q. West toward 16th Street. Can you tell us what direction she was walking when you saw her, with reference to the bus? A. She was walking south to the other platform, where she would get the bus.

Q. She was walking in the direction of the bus? A. To the bus.

Q. What did you do then? A. I couldn't cross right then because a car that was there turned around.

Q. It turned around? A. And I ran across to see what had happened, and I ran home and got a doctor.

Q. Going back to that car that turned around, where did that car come from? A. It was making a curb turn there on 16th Street.

Q. I show you now this Plaintiff's Exhibit 4, can you tell us— A. (Interposing) Like this car (indicating)?

Q. Like the car there? A. Yes.

Q. You may mark this; and that car turned in front of you so you couldn't go across? A. I couldn't go across, otherwise I would have—

Mr. Quinn: (Interposing) When was that?

By Mr. Offutt:

Q. When was that that the car was turning in front of you, Mr. Quinn wants to know? A. Just after she was hit.

Q. Did you have a clear view of her when she was hit? A. Just as clear as a moving picture screen.

Q. Then that car was making a left-hand turn, that turn into K Street? A. Yes.

Mr. Offutt: Members of the jury, indicating a car making the left-hand turn just after she was hit.

The Court: We will adjourn until 10 o'clock tomorrow.

Mr. Offutt: If your Honor, please, might I finish with this one witness? She came down from New York, and she works for the Veterans' Bureau.

The Court: Proceed.

The Witness: I don't mind.

Mr. Offutt: She says she don't mind waiting over until tomorrow.

The Court: Adjourned till 10 o'clock.

(Thereupon, at 3:45 o'clock Court was adjourned and further proceedings herein continued until 10 o'clock, March 5/43).

* * * * *

193 Q. Miss Yeager, I show you now plaintiff's Exhibit No. 3, and ask you if you can mark a point on this picture about where the plaintiff was knocked by this car striking her? (Handing photograph to witness.) A. There were three manholes—aren't they marked in on this—in the center of 16th Street.

Q. Can you see them in that picture? A. She was knocked about—

Q. (Interposing) But with reference to those two manholes, where was she? A. She was almost to those manholes.

Q. And do those manholes run east and west or north and south? A. No, north and south.

Q. North and south? A. I believe, and then there is another one almost straight across from the one nearest the north, and she was between those two.

194 Q. Between those two? A. Yes.

Q. And can you see those manholes on the photograph easily? A. No, I don't see them.

Q. Keep your voice up. A. No, I don't see them.

Q. Where were the manholes? A. Up in the center of the street.

Q. Which street? A. 16th Street.

Q. And which ones are you referring to? A. The three north and south in 16th Street; her head was almost to this manhole (indicating).

Q. You mean on the east side of the manhole? A. Yes.

Q. And now, will you draw a mark, as nearly as you can, where she was? A. Put a "Y"? I would say about—it is obscure.

Mr. Offutt: Could we use the light a moment, you Honor? I think the light would show the manholes.

Clerk of the Court: The X-ray light?

Mr. Offutt: No, the light on the Judge's desk.

By Mr. Offutt:

195 Q. Suppose you look up here and see if you can see them on this picture? A. She was hit—

Q. (Interposing) If you are speaking for the record, speak up. A. She was hit about in there (indicating).

Q. Now, you have a "Y", your initial; and now tell me in what part of the "Y" was she lying? A. The top of the "Y".

Q. Now, just put a dot about where you say she was lying. A. About here (indicating).

Mr. Offutt: If your Honor please, the witness made a dot right at the top of the "Y" where she said the lady was lying.

By Mr. Offutt:

Q. You have a "Y" right there? A. And not the first. I couldn't see the manhole.

Q. The right one, the one to the right, without the dot on it isn't the right position? A. No.

Mr. Quinn: May I see it?

Mr. Offutt: So the record may show that clearly, Mr. Quinn, the witness indicated the one to the right of
196 the lamp post isn't the correct one, but the one on the left of the lamp post is where she placed the lady, and the dot at the top of the "Y" is where she placed the body.

May I exhibit this to the jury now, if your Honor please?

In the photograph here where I place this pencil, the dot at the top of the "Y" is where the witness indicated the body stopped after being struck by the car. This "Y" without the dot is the one she made first.

By Mr. Offutt:

Q. Now, Miss Yeager, what happened after that, after plaintiff came to rest at the point you have indicated here, and the car I think you have indicated came to a stop about even with the curb line of 16th Street, what occurred then? What did you do? A. First, there was a crash of glass, and the impact of hitting the body made a terrific noise, and glass was strewn all over the street, and as soon as this car went by I ran across, and she was lying face down on 16th Street in an east and west position, and the bones were sticking out of her leg, and she was just one solid mass of blood and dirt. I couldn't hardly tell it was a person; and I looked at her, and looked around; there was no
197 policeman, they hadn't had time to get there then, but somebody said they had gone to the Carlton to

call a policeman, and I left right there, and I ran up the street to get Doctor English, and Dr. Wilcox, and Doctor Wilcox, came back with me, but he said there was nothing he could do until the ambulance came, and the ambulance came and he helped to put the body in the ambulance.

* * * * *

199 Q. Now, when this lady who was struck was walking, as you have indicated, toward the separation island, or safety island, did you observe a bus standing waiting there? A. Yes.

Q. And was that up near 16th Street? A. It was on the opposite side of the platform from the automobile.

200 Q. That is, on this side of the platform (indicating)? A. Yes.

Q. But was it down toward 16th Street? A. No, it was a little back up here (indicating).

* * * * *

200 Q. And that is when you gave your name and address? A. Yes, sir.

Q. And you had given your name and address before that? A. Yes.

Q. Did you ever go to a hearing of any kind? A. No, I have never been in a courtroom before.

201 Q. You are here in answer to a subpoena today, are you not? A. Yes, sir.

Mr. Offutt: Does your Honor wish to take a five-minute recess.

The Court: The Court stands recessed for five minutes.

(Thereupon, a short recess was had, following which this then occurred:)

By Mr. Offutt:

Q. Miss Yeager, when the plaintiff was struck, did you observe whether she—what part of the car she struck? A. I would say the bumper.

Q. Was she thrown up on top of the hood in any way? A. She was thrown as high as the hood of the car, and she hit the ground and slid on into 16th Street as far as the man-hole.

Q. I have in mind the car, did she strike any part of the car after striking the bumper? A. I don't believe so. I believe she just hit the bumper and then fell on the ground and slid.

* * * * *

202 Cross-Examination

By Mr. Quinn:

Q. Is it Miss or Mrs. Yeager? A. Miss.

Q. Miss Yeager, in answer to the last question you said the car did not slacken its speed until it struck her? Is that correct? A. I said approximately.

Q. What? A. Approximately.

Q. What do you mean approximately? A. It was going just about as fast when it hit as it was before.

Q. As it was when you first saw it? A. Yes, sir.

Q. And it stopped in five or six feet, didn't it, after
203 it struck her? A. I wouldn't say how many feet, but it struck from about that white line to the end of the platform.

Q. The white line to the end of this platform here (indicating)? A. Yes.

Q. And it stopped with the front of the car about halfway between the white line and the end of the platform, didn't it? A. The front of the car?

Q. Yes, halfway between the white line and the end of the platform? A. It stopped even with the platform.

Q. Even with the end of the platform? A. Yes.

* * * * *

207 Q. And you were standing where you marked a "Y" on the exhibit? A. A clear, straight view through.

Q. And you looked down the street at an angle and saw the car that was involved in the accident back at the private driveway? A. Yes.

Q. And that was the time you noticed the speed of the car particularly? A. Yes, you could see that between the movement of the buses, as they all came along.

208 Q. You could see that between the movement of the buses as they came along, and you estimated a speed at 35 miles an hour and it was coming pretty fast? A. Because it was faster than ordinary driving.

Q. And you continued to watch it until it hit? A. Yes. I watched the whole thing.

* * * * *

208 Q. How was she traveling? Was she walking or running? A. She was walking.

209 Q. Walking fast? A. As one would walk across 16th.

Q. No, I am asking you was she walking fast? A. No faster than the average person would walk.

Q. How far had she gotten out into the street before she was struck? A. Probably two-thirds of the way across.

* * * * *

225 Q. How far into the street had she gotten? A. Probably halfway across.

Q. And that is when you first saw the automobile? A. No, I saw this car back here (indicating).

Q. I mean when you first saw her, how far into the street had you seen her? A. She stepped off, and you have got that car, that fast car coming, approximately at one time.

Q. And when you glanced here— A. (Interposing) I saw the car coming, and she got two-thirds of the way over, and it hit her.

Q. When you were here at this island, you looked over there and saw her step off the curb? A. Yes.

Q. And then you looked this way (indicating) and saw the automobile coming down at that driveway? A. No, I

saw it all in one picture.

226 The Court: The Court thinks this witness has answered it several times.

By Mr. Quinn:

Q. But you saw her first? A. I saw her step off, and the whole picture happened so quickly.

Q. You saw her step off, and then you saw the automobile, at that time the automobile was down at the driveway coming about 35 miles an hour at your estimate? A. You saw the car, you saw the woman, you saw the whole thing just about the same time. You hardly would know which you saw first.

Q. And now, you say the glass was all over the street? A. Yes.

Q. And now, just what do you mean by that, that it was all over the crosswalk or out into 16th Street? A. Out into 16th Street.

Q. Was it toward where the woman's body was lying? A. From the platform out to the body, all out in there.

Q. The glass was there? A. Yes, sir.

* * * * *

Mrs. Melissa B. Roper, a witness produced on behalf of appellees, testified as follows:

300 Direct Examination

By Mr. Offutt:

Q. Will you state your full name, Mrs. Roper. A. Mrs. Melissa B. Roper.

Q. Where do you reside? A. 801 Varnum Street, N. W.

Q. How long have you been residing at that address? A. 51½ years.

Q. And where are you employed now? A. War Department.

Q. And in what branch of the War Department? A. Adjutant General's Office, Statistics and Reports section.

Q. Mrs. Roper, on April 24, 1939, where were you then employed? A. Census Bureau, 14th and Constitution Avenue.

Q. Were you a witness to an accident on April 24, 1939, which occurred at the intersection of 16th and K Streets, Northwest, when an automobile struck a pedestrian at that corner? A. I was.

Q. And where were you at that time? A. I was a passenger in the bus.

301 Q. And where was the bus? A. The bus was stopped at 16th and K.

Q. Where was the bus headed for, if you know? A. The bus was headed east, pardon me, west on K, waiting to make a right-hand turn into 16th Street.

Q. And were you on your way home? A. Yes.

Q. Do you know the name of the bus, and its destination? A. It was a Petworth bus, a P-2 bus, is the number. Petworth, turning on 16th to Harvard.

Q. And where had you boarded that bus? A. On 15th Street, north of Constitution Avenue.

Q. Now, what time of the day was it, about? A. It probably was just after four o'clock.

Q. And what was the weather? A. It was fair.

Q. Was the sun shining, a bright day? A. It was a fair day. I don't know whether the sun was shining. I suppose it was.

Q. Where was the bus with reference to 16th Street? A. It was just east of the crosswalk.

Q. And when you say "east"— A. (Interposing)
302 There is a safety zone, or platform there, as I recall it. The bus had stopped just east of the end of the safety zone.

Q. And had it taken on any passengers, to your recollection? A. I believe it had.

Q. Was the door of the bus open or closed? A. It was open.

Q. Did you see the lady who was struck before she was

hit? A. I recall an elderly woman crossing the street. She had taken perhaps a few steps, and I surmised she was going to board the bus.

Q. Which direction was she walking? A. She was walking south.

Q. Was she walking toward the bus or away from it? A. She was walking toward the bus.

Q. What was the condition of the light at that time, if you know, controlling K Street traffic, if you know? A. The light was red, that is, the light that I was facing.

Mr. Quinn: The light, what?

The Witness: The light I was facing was red.

By Mr. Offutt:

Q. And which way was the bus facing at that time?
303 A. West.

Q. So that would be the light on the northwest corner? A. Northwest corner.

Q. And what happened after the lady left the curb? Did you see her after she had left the curb and was walking toward the bus? A. Yes, I did.

Q. Was she walking or running? A. She was walking.

Q. And tell us what happened when you saw it. A. Well, she took two steps, probably three, and then she was hit. She was not running. She might have been hurrying.

Q. What portion—how far had she progressed? A. She probably got halfway between the pavement in front of what is now the Statler Hotel, and took about three steps toward the bus, which would bring her close to halfway between the safety zone and the pavement.

Q. And is that where she was when she was struck? A. Yes.

Q. And did you see her when she was struck? A. Yes, I saw her.

Q. What happened? A. The car hit her. I re-
304 member seeing her body go up in the air and then hit the street quite a ways out in 16th Street. I can't

judge the distance but it would be close to the middle of 16th.

Q. Then what occurred? A. Well, I was excited—

Q. (Interposing) Did you stay on the bus or get out?

A. I got out of the bus.

Q. Did the bus driver stay on or get out? A. The bus driver got out.

Q. By the way, I want to show you this photograph marked Plaintiff's Exhibit 3, and I will ask you if you recognize that scene as the place where the accident occurred on that day (handing witness photograph). A. (After examining photograph referred to) Yes, I do recognize it.

Q. Now, can you tell us where the woman that you saw leave the curb, where she was on the curb when she left?

A. She was just about at the lamp post.

Q. And where was she when she was struck, on that picture? A. Just about where that person is there (indicating).

Q. You mean just about in the position where the
305 person is on this photograph? A. Yes.

Q. And can you tell us about where the bus was that you were in at the time you saw this accident? A. The bus was probably in about this position here (indicating). It was in front of this car.

Q. Will you take this pen and mark a line out from the curb so that it would be about where the front of the bus was? A. From here (indicating).

Q. From the curb to about where the front of the bus was? A. Yes.

Mr. Quinn: Did she put a mark there?

Mr. Offutt: She put a mark there.

Mr. Quinn: With her initials, to indicate it?

Mr. Offutt: She put a straight line out. Do you want an initial on there?

Mr. Quinn: That is all right, just so we can identify it.

By Mr. Offutt:

Q. It is a straight line in front of the curb, is that right?

A. Yes, sir.

306 Q. In front of that taxicab which is there? Suppose you put a small—well, you said that woman was about where this lady is right here, when she was struck?

A. Yes.

Q. And did you say about where the lamp post was when she left the curb? A. I think about by the side of the post, and she walked from there over there (indicating).

* * * * *

306 By Mr. Offutt:

Q. Will you mark on this photograph, if you can, a small cross mark where the woman was when she was struck, when she was stopped after being knocked by the automobile? A. I didn't get your question. Do you mean where the body laid?

Q. Where the body laid after it came to a stop after being struck by the automobile? A. Shall I put a mark on the picture or not?

Q. Suppose you point to where it was first. Here
307 is a pencil. Then we will see if you can mark it. A. Just about there (indicating).

Q. Now, where was the car which struck her after it stopped? Was it close to the middle zone, or over close to the right-hand? Don't mark the picture yet. A. No, I won't. It was just close to the safety zone here. Her fenders were very close to the safety zone after I got out of the bus.

Q. After you got out of the bus? A. After I got out of the bus.

Q. Had the car been moved from the time you got out of the bus since the accident? A. From the time she hit the woman?

Q. From the time she hit the woman? A. I don't think so.

Q. Were you looking at her all the time? Were you looking at the car all the time? A. The car that hit the woman moved.

Q. I understand that, but where did it stop? A. Here (indicating).

Q. Where was the front end? A. The front end was close out here.

Q. You are indicating a line even with the curb line of 16th Street?

308 Mr. Quinn: Curb line of the island?

Mr. Offutt: Curb line of the island? Isn't the curb line of the island even with the line of 16th Street, Mr. Quinn?

Mr. Quinn: No. You will find it some distance back.

Mr. Offutt: It is one inch to 10 feet.

By Mr. Offutt:

Q. Will you just take this pen and put a small cross mark where you say the woman was lying after she came to a stop, after the car struck her.

(Witness indicating.)

Q. And will you make a line, a very short line, about where you say the front of her car was after it stopped?

A. (Witness indicates.)

Q. And was she as close as you have marked it there up to the curb? A. She was very close to the curb.

Mr. Offutt: And now, if I can show this to the jury.

Can you see it?

Mr. Quinn: I haven't seen all the marks she has made there now. All right. (After looking at photograph.)

Mr. Offutt: (Exhibiting photograph to jury.) That is the mark where she says the body was. Members of the jury, this mark here is where the front of the bus
309 was. That mark here is where the car stopped after it struck the woman, the plaintiff. Here is where the plaintiff left the curb right hereby the lamp post, and walked out this way. She was struck about where this woman is right here. Her body was knocked to about this point, right here.

This is where the front of the bus was, the witness states. This is where she left the curb, and this is where she was after she was struck, and this is where the body lay in the street after being struck.

This is where the plaintiff left the curb and walked out this way. She was struck at about this point, and the car stopped at about this point, and the woman was knocked out to this point (indicating).

By Mr. Offutt:

Q. Mrs. Roper, when you got out of the car—did you get out of the bus immediately after the accident? A. Yes.

Q. And where did you go? A. I walked over and looked at the woman.

Q. Which woman? A. The woman who was hit.

Q. Did you go to the car? Did you see who was
310 driving the automobile? A. On the return to the bus, yes I did.

Q. And will you describe the woman driver of the car, was she a young woman or old woman? A. She was a young girl.

Q. And what kind of a car was it? A. I don't know.

Q. Do you know what tags it had on it? A. Pennsylvania tags on it.

Q. And were you interested in the car, the Pennsylvania car? A. Just because I am a Pennsylvanian. That is about the only interest I had in it.

Q. And did you know the woman driving the car? A. No.

Q. And did you know the plaintiff in this case? A. No.

Q. Did you ever see the plaintiff from that day until today? A. No.

Q. Did you know her before that day? A. No.

Q. What was the condition of the woman driver of the car? A. She was quite hysterical.

* * * * *

313 Q. Did you give your name to the police at the scene of the accident? A. No.

Q. Did you give your name to anybody? A. The bus driver took my name.

Q. And did you give your name to the bus driver, too? A. Yes.

314 Q. Do you remember this accident clearly? A. Yes, sir.

Q. Where were you sitting in the bus? A. Just back of the driver's seat.

Q. And which way were you facing? A. I was facing toward the door, which would be north.

Q. Was there anything to obstruct your view? A. No, there was not.

Q. Of either the light or the woman? A. No.

Q. Were there any people standing up in the front of the bus? A. No.

* * * * *

317 Q. And this light over here (indicating) has a hood on it, too, hasn't it? A. But I was facing—may I make a statement? When I am in a bus and right behind the driver's seat, I have driven a car, and I usually don't have anything to do but watch the traffic and watch the light, and I distinctly remember seeing the light was red.

Q. You knew you were going up 16th? A. Yes, and I was waiting for the light to change to go up 16th Street.

Q. You were waiting for it to change? A. Yes.

* * * * *

Beverly Benjamin Burton, called as a witness for appellees, testified as follows:

242 By Mr. Offutt:

Q. Will you state your full name? A. Beverly Benjamin Burton.

Q. Where do you reside? A. I live at 1310 Corcoran Street, N. W.

Q. And where were you employed up until recently? A. Adjutant General's Office, War Department.

Q. And you were there just one month short of being retired in the due course of time? A. Yes, sir.

Q. I think you had put in all this time, lacking a day, and they gave you a medal?

Mr. Quinn: We are not trying Beverly.

By Mr. Offutt:

Q. You have been subpoenaed by both the plaintiff
243 as well as the defendant? A. Yes.

Q. Both Mr. Quinn and I have you here as a witness today, is that correct? A. Yes.

* * * * *

Q. How were you going home? A. Riding a bicycle. I was riding a bicycle. I have been riding a bicycle here in the District since 1914.

Q. The same bicycle? A. Yes. I was on my way home, and I happened to stop on 16th Street, 16th and K, for the red light.

Q. For the red light? A. Yes.

244 Q. Where did you stop? A. I stopped on the southeast corner.

Q. Did you stop on the southeast corner by the Carlton Hotel, or out here where the separation island place is now? A. I don't remember now.

Q. What is your best recollection? A. I know I stopped on the corner, but I don't think I crossed the first alleyway.

Q. And your best recollection is that you stopped at the corner where the Hotel was? A. At the corner.

Q. Where was the light that was red for you? A. Straight in front of me, on the right side going north on 16th.

Q. What happened while you were there? A. Well, while I was there, waiting for the green light, I happened to look down across the Street, and I saw a woman in the air. The automobile had struck her, and I saw her, and she was going in the air, like that (indicating), and fell out in 16th Street.

Q. Which direction was the car going that had struck her, if you know? A. It was going west on K Street.

Q. And which way was the woman's body going
245 that you saw in the air? A. Going the same way.

Q. And can you tell us about how far out in to 16th Street the woman was knocked? A. I don't know, but it was, oh, there was a policeman there.

Q. Did you see him there at that time? A. Yes, sir. I think it was something about 20 or 18 feet; 20 feet, somewhere along in there. I don't remember now.

Q. Do you remember anything on the street by which you fixed her place on the street, where she lit? A. There was a sewer top on there, I think there were two or three sewer tops. She was pretty close to those.

Q. She was lying pretty close to those sewer tops? A. Yes, sir.

Q. And those sewer tops, were they pretty close to the center of 16th Street? A. Yes, sir; pretty close to the center.

Q. At the time this lady was struck was the light on your right that you stopped for still red? A. It was still red. When I saw that, I stopped.

Mr. Quinn: Now, we said when she was struck.

By Mr. Offutt:

Q. My question was did you observe the light when you saw the lady going through the air, what corner was the light on the northeast corner at that time? A. I
246 didn't notice the light at that time, but after it happened I crossed the street.

Q. Let me ask you another thing: when you crossed the street, was the light green then? A. Yes.

Q. Now, when you stopped over at the corner of the Carlton Hotel and this light was red to cross, you stopped? A. Yes, sir.

Q. When did the light turn red? Just before you reached the corner or as you reached the corner? A. Just a few seconds before I got to the corner.

Q. And with reference to the time the light changed red and you saw the woman going through the air, was that a matter of seconds? A. Yes, sir, a matter of second.

Mr. Offutt: No further questions. You may examine, Mr. Quinn.

Cross-Examination

By Mr. Quinn:

Q. Now, Mr. Burton, you were really standing right at the end of that safety island when the accident happened, were you not? A. I always thought I was on the corner.

Q. You always thought you were on the corner.
247 A. I was on the corner but I don't hardly remember whether I was on the island.

Q. Did you see the automobile that struck the lady at all before it struck her? A. No, sir.

Q. And you did not see her until she was in the act of being struck? A. No, sir, I didn't see her until I crossed the street.

* * * * *

249 Q. Was the front end of the automobile just about on the outer edge of 16th Street when it came to a stop? A. It stopped very close to the corner, that is the curb.

Q. Do you mean the curb, street line? A. Yes.

Q. It stopped very close to that. A. Yes.

Q. Did you notice a bus there at the time? A. Yes, sir.

Q. Was that bus up close to the corner of the island? A. It wasn't next to the island but it was close to it.

Q. It was close to it? A. Yes, sir, it was close to it.

Q. By the way, after this lady was struck, did she
250 roll or slide, on the street before she came to rest.
A. She slid on the street.

* * * * *

251 Re-direct Examination

By Mr. Offutt:

Q. Now, this photograph Mr. Quinn has just shown you, you will notice that the cars are going south. Do you
252 see them going south? A. Yes.

Q. Were the cars going south like that at the time the lights were red, as you stopped your car, or stopped your bicycle rather? A. Yes, sir. Was crossing, going south you mean on K?

Q. No, south on 16th Street? A. That's right on 16th.

Q. Were the cars going south on 16th at the time you stopped your wheel and waited over there for the light to change? A. There was a car making a bend at 16th Street. I noticed that one or two cars, coming along going east on K, that is coming off 16th, north on 16th.

Q. And those are the cars you are talking about that went in front of the girl, is that right? A. No. They was going south on 16th Street.

* * * * *

253 Q. Now, the first time you saw Mr. Quinn, was the day before yesterday wasn't it? A. Yes, sir.

Q. And when was the first time you saw me and gave me a statement about this accident, having in mind the day the accident happened? Was it a short time afterwards or just within the last week or so? A. I think it was the third or fourth day. I don't know exactly what time.

Mr. Quinn: The third or fourth day from what? Three or four days after the accident?

Mr. Offutt: After the accident?

The Witness: No, after the accident.

By Mr. Offutt:

Q. And you say Mr. Quinn saw you for the first time just two days ago, didn't you? A. Yes, two days ago.

Q. And isn't it a fact that is the first time, when you saw Mr. Quinn just a few days ago, that anybody asked you

about two cars, or a car, going west on K Street in front of this lady? Answer that yes or no if you can.

Mr. Quinn: Just a minute. What is he doing?
254 Trying to impeach his own witness?

Mr. Offutt: No, just trying to straighten it out.

Mr. Quinn: I object, if the Court please.

The Court: The witness is subpoenaed by both parties, as the court understands.

By Mr. Offutt:

Q. Let me show you this photograph, Plaintiff's Exhibit No. 4, the car you referred to that made the turn from 16th into K; do you see this car with a little "Y" under it? A. Yes.

Q. Is that the car that made the turn? A. Yes, sir.

Q. What corner were you on? A. On the southeast corner.

Q. By the Carlton Hotel? A. Yes.

Q. When you saw this light on this corner, what was the color? A. It was still red.

Q. What was it when you saw this woman going through here? A. When I noticed the car the light was red, and it seemed to me that the light didn't turn green, I think, before I saw the accident.

255 Q. And when you say you saw the accident was when you say you saw the woman going through the air? A. Yes, when I saw the woman going through the air, then I noticed again, and the green light was on, and that is when I crossed the street?

Q. That is your best recollection about the accident? A. Yes.

Q. You have no interest in this accident, have you? A. No.

* * * * *

Donald Russell Shepherd, called as a witness for appellees, testified as follows:

* * * * *

144 By Mr. Offutt:

Q. I show you that which is marked Plaintiffs' Exhibit 3, and ask you if you will indicate on there the light you refer to? A. The light over here on the northwest corner (indicating).

Q. Will you just mark— A. (interposing) I don't see the light there—oh, there it is.

Q. Just put a C after it. A. (Witness indicated on photograph.)

Mr. Offutt: Can the jury see that?

I am sorry; does your Honor wish to see that? He marked the light on the northwest corner.

By Mr. Offutt:

Q. Now, at that time about where was the woman when she stepped off? Will you mark this, please? A. I should say she was in the crosswalk (indicating).

Q. Mark that C also. A. Mark that C also?

145 Q. That is all right, yes, and then about where was the automobile?

Mr. Quinn: Where did he mark it?

Mr. Offutt: He marked the C right at the north curb.

Mr. Quinn: Is that the same one she marked?

Mr. Offutt: I thought I would let him mark the various places, and then show the Court and jury.

No, it is not. Do you want to see it, Mr. Quinn?

Mr. Quinn: Go ahead.

By Mr. Offutt:

Q. And at that time when she stepped off the curb about where was this Pennsylvania car ahead of you? Can you see on this picture? A. I can see, but I can't tell exactly where she was. I should judge she was back considerably behind the parked cars, I would imagine. I will mark it.

Q. Just a minute; there are two cars here. A. Well, that picture was not taken at the time of the accident, was it?

Q. Let me show you another photograph and see if this will help you any.

I show you that now which is marked Plaintiffs' Exhibit No. 5. Does that show the corner and building as it
146 was at that time (handing exhibit to witness)? A. That is right, here is the crosswalk and here is the traffic light (indicating).

* * * * *

147 Q. Will you mark about where you say she was struck? A. That is to the best of my knowledge right there (indicating).

Mr. Offutt: Do you want to see this, Mr. Quinn, before showing it to the jury?

Mr. Quinn: I would like to see them all. You are having them marked.

Mr. Offutt: If you will step up here as the witness marks them.

Mr. Quinn: Will you let me see what you have marked? I think I am entitled to see.

Mr. Offutt: But you were not up here when the witness marked them.

This is where he marked them to show where she
148 stepped off the curb. This is the light, and that is where the automobile was when the lady stepped off of the curb.

Members of the jury, this is the mark at the northwest corner where he says the light was that he says was red as he approached 16th Street.

This is where he says the lady was when he saw her step off the curb, that C there, and then I will pass the picture among you, and then that mark right in front of the automobile on the north lane is where she was struck, and this mark right here, about even with that lamp-post, is where the automobile was bearing the Pennsylvania tags when the lady stepped off the curb at this point, about even with the building line of that building.

A Juror: Did the Pennsylvania car strike the woman?
Mr. Offutt: Yes, the Pennsylvania car struck the woman.

* * * * *

151 Q. Did it go as far as the curblin of 16th Street?
Did that automobile go on as far as this (indicating)?

A. I don't recall exactly, but that is approximately.

Q. Approximately? A. The curb line, yes.

Q. Did you see who was driving that car that struck this lady? A. I didn't notice particularly, no.

I walked out in the intersection there, and the minute I got a chance I got around this car and drove on off. I did not stay until the ambulance stopped.

Q. And had this car in front of you been moved before you left? A. I don't believe so. It may have been, but I do not believe so.

Q. Did you see the woman that had been struck there in the street? A. I walked out there, and there was quite a crowd.

Q. Will you describe her condition? A. She was unconscious, and had evidently broken her leg because the bone was sticking through the stocking, and her head seemed to be injured, too.

Q. What made you say her head seemed to be injured? A. There was blood on the pavement.

Q. Did you see who was in the car that struck her,
152 whether men or women? A. I saw that there was a girl driving the car, and a man in the car, but I didn't pay any particular attention.

There may have been more than that, but I didn't notice them.

Q. Did you notice whether the person driving the car was an old or young woman? A. She seemed to be a young woman.

Q. And did she get out of the car? A. She didn't while I was there.

Q. Will you describe her condition, whether she was calm and collected, or nervous? A. She seemed to be quite hysterical.

Q. Can you describe anything you saw her do while you were there? A. As far as I know, she didn't get out of the car, but she may have when I was out in the crowd that gathered, but as far as I know she did not leave the car.

I think the lady that was with her got out of the car and walked around the driver's side.

Q. Did you observe a bus there? A. There was a bus loading.

Q. Where was that? A. There is a bus stop there, I suppose ten feet behind the crosswalk, that is, the west limit of the crosswalk.

153 Q. When you say the crosswalk, do you mean ten feet back of this point (indicating)? A. Yes, ten feet back of the west white line.

Q. Of the white line? A. The crosswalk is marked there.

Q. By the way, what kind of a day was it? What was the weather? A. It was clear.

Q. Was it a bright day? A. Yes, it was a bright day and perfectly clear.

Q. Sunshiny? A. Yes, the sun was shining, I believe.

* * * * *

154 Cross Examination

By Mr. Quinn:

Q. Who did you give your name to? Officer Martin?
A. Yes, sir. There are two Officer Martins, Frederick Martin.

Q. That is the gentleman who has been to court today?
A. He is out there in the witness room.

Q. He is out there in the witness room now? A. Yes.

Q. Did you see him at the station? A. At the station, yes.

* * * * *

157 Q. You were riding in a position close to the curb of the island? A. Out in the other lane. (indicating).

Q. This is the north lane? A. Out there (indicating).

Q. This is going west on K Street, and you were riding that close to the curb of the island? A. Yes.

Q. And the car she was driving was more in the center of the space between the parked cars and the island, in other words, to your right? A. Oh, maybe a couple of feet.

* * * * *

158 Q. Didn't you see a car or two going through the intersection? A. Absolutely not.

159 Q. And just ahead of this car? A. No, sir, and there wasn't, either.

Q. There was not? A. No, there was no car ahead of this car crossing 16th.

Q. But tell me this; you didn't notice whether her car slowed up or not before this collision took place? A. She must have slowed up.

Q. No, but did you notice it, that's the thing? A. No, sir, I think not.

Q. You didn't notice whether it slowed up or not? A. No.

Q. When the lady stepped off the curb this Pennsylvania car was how far back from the intersection; 15 or 20 feet back from the point where she stepped off? A. Approximately, maybe 40 feet.

Q. Maybe 40 feet? A. I couldn't tell you accurately how far it was.

Q. This lady was walking south? A. Walking briskly, yes; I would say probably trying to catch that bus over there.

Q. Was she walking briskly or running? A. Not running that I saw.

Q. But you saw that if she didn't slow up that
160 there was going to be an accident? A. I am always watching for them stepping off, especially during the rush hours.

* * * * *

161 Q. Who next did you see after you saw Officer Martin? A. I saw Mr. Offutt.

Q. When? A. Ten months after he came to my apartment. I don't remember whether I gave him a statement or not, but it was ten months later.

Q. But you talked to him when he came to your apartment? A. Yes, sir.

Q. And told him what you knew about it? A. Yes, sir.

Q. And when was that? A. I don't remember.

Q. After the accident? A. Yes, sir.

Q. Was it two months or three months? A. I
162 don't remember.

Q. But it was some time before you made the signed statement? A. Yes.

Mr. Quinn: Have you the statement you took from him?

Mr. Offutt: Yes. Do you mean the signed statement, or the one I made out in my own handwriting?

Will you let me see yours?

Mr. Quinn: Sure. I will let you see anything.

Mr. Offutt: Including the one you got yesterday?

Mr. Quinn: Oh, you know we got one yesterday, do you?

Mr. Offutt: Yes, and you know it, too, don't you?

By Mr. Quinn:

Q. Read that. This is the statement you signed, isn't it (handing paper to witness)? A. Read this?

Q. Just look it over, and then I want to ask you some questions about it.

The Court: Recess for five minutes.

(Thereupon a short recess was had; after which this then occurred:)

By Mr. Quinn:

Q. Now, let's see if I understand your testimony: You testified that after this accident you pulled out and
163 around the cars? A. Yes, I pulled out.

Q. Do you mean that you pulled to the right or to the left of the car that was involved in the accident? A. I believe I got around to the right.

Mr. Offutt: To the right?

The Witness: You see, there were no parked cars there.

By Mr. Quinn:

Q. You would come in to this corner and pull around then, and did you go ahead on K Street? A. No, sir, I think I made a right turn.

Q. Made a right turn and went up 16th Street? A. Yes.

Q. I think you said you did not wait for the police to come? A. No, the police had not been there, I am quite positive, when I left.

Q. And that the ambulance had not come? A. I believe the ambulance was there when I left.

Q. But the police had not come? A. No.

Q. And you went to the precinct and gave your name to Officer Martin? A. Yes.

164 Q. Now, let me call your attention to your statement, in your statement signed for Mr. Offutt on February 24, 1939:

"A large crowd collected, and the Police Department came"— A. I don't know whether the Police Department came. I don't think they had been there.

Q. "And finally an Emergency Hospital ambulance came and removed the woman to the hospital." A. Yes, it may have. It was four years since that happened. I couldn't tell.

Q. "And then the Pennsylvania car was moved and I went on my way." A. I don't think the Pennsylvania car was moved. They may have pulled the car up so I could get around.

Q. But in your statement to Mr. Offutt on February 24, 1940, when you made that statement, was that true or not? A. I don't know as it is true or not. Perhaps it was. I am trying to tell it as it is here now, but if I were to read the statement I would stick to that, but it is hard to remember four years afterwards whether I pulled around the car, or they pulled the car up.

Mr. Offutt: I think Mr. Quinn should give him an opportunity to read the statement.

Mr. Quinn gave it to him once and took it back.

Mr. Quinn: I gave him an opportunity to read it.

By Mr. Quinn:

165 Well, you marked this photograph, Plaintiffs' Exhibit 3, where you put that circle, showing the spot where you saw the lady when she stepped off the curb, and you are sure you saw her when she stepped off the curb?
A. I saw her before she got into the lane of traffic here.

* * * * *

169 Q. Now, you gave a statement the other night in this case, didn't you? A. Yes.

Q. Before you gave the statement, how many engagements did you make with the gentleman who took it, Mr. Cooney? A. I made one, as far as I know, and got the wrong number in the Woodward Building.

Q. As a matter of fact, you made four or five, didn't you?
A. He may have called my room-mate, but not me, and did not tell me where to see him.

Q. And, as a matter of fact, when he finally got you at your apartment where you live, you told him that
170 you were sorry you didn't see him before Mr. Offutt saw you? A. No, I didn't tell him I was sorry he didn't see me before Mr. Offutt saw me, but I told him I was sorry I couldn't help him out any more than I could.

He had evidently called up my boss and told me to do what I could for him.

* * * * *

Q. You signed that statement you gave that gentleman?
A. Yes, sir.

Mr. Offutt: Now, let me see that statement. You promised to let me see it.

Mr. Quinn: If you will be patient.

Mr. Offutt: You promised to let me see it, so—I kept my word.

Mr. Quinn: Just a minute. If your Honor please, I am tired of being lectured by counsel.

If you will let me examine him you may have it and you can have a photograph made of it.

171 The Court: I can't compel him to give it to you.

Mr. Offutt: Very well, if he don't want to live up to it.

By Mr. Quinn:

Q. Is that the statement you gave Mr. Cooney (handing paper to witness)? A. (after examining) Yes, sir.

Q. And this diagram? A. Yes.

Q. And these parked cars are along the side? A. I believe he put them in there.

Q. And the distances they were, and the busses? A. I told the distance the busses usually load back of the crossing. I believe that is about a good 25 feet.

Q. And you told him this lady was coming at an angle? A. If she was going to catch a bus she had to come at an angle.

Q. I don't want you to assume that she had to do anything.

What did you see? A. I saw something all right, but I don't know whether she was going at an angle, or straight, or going up to the Carlton Hotel.

All I know is that she walked out here very abruptly and was struck. A. I can't remember the details of what
172 happened four years ago.

Q. And this is the position you placed the car? A. Yes.

Q. And your car back here and the bus there (indicating)? A. Yes.

Mr. Quinn: Now, Mr. Offutt, you may have it.

By Mr. Quinn:

Q. This woman, when she was lying in the street, was bleeding profusely, was she? A. I saw some blood on the pavement, but I don't know whether you would call it profusely or not.

I do know that one leg was broken at least. I saw that.

Q. Did you see any bleeding, any blood on the pavement?

A. I saw some blood on her hair. Evidently she had a fractured skull—I don't know whether she had a fractured skull or not, but anyhow I saw some blood.

Q. Did you notice any tire marks on the street back of this car? A. I didn't look for them.

Q. Did you say that this young lady was hysterical? A. Yes, sir. I walked by the car to get out to where this lady was lying.

Q. Did you stop to speak to her at all? A. No, I
173 did not.

Q. Did you give any assistance to the injured woman? A. No, I did not. She couldn't be moved, anyway. Somebody put a coat, or something, under her head, I believe.

Q. I notice in this statement to Mr. Offutt that you say, "She was bleeding very bad. She appeared to be dead."

Is that true? A. That's right. I went to the Morgue next day. I was afraid of something. I stayed at the Morgue all that morning and missed the investigation, whatever it was.

Mr. Quinn: Will you mark that paper I referred to as Defendants' Exhibit for identification No. 1?

By Mr. Quinn:

Q. Now, this statement—

Mr. Offutt: May I have that last answer read?

The Reporter (reading): "I went to the Morgue next day. I was afraid of something. I stayed at the Morgue all that morning and missed the investigation, whatever it was."

By Mr. Quinn:

Q. What has the Morgue to do with it? A. Nothing.

The Court: He thought the lady was dead.

By Mr. Quinn:

Q. You thought that the woman was dead, and the next morning you went down to the Morgue? A. No, the
 174 next morning somebody came up to my apartment and left word, perhaps it was the Police Department, I don't know, but anyway I thought it was an inquest and went down and stayed a couple of hours, and the attendant told me that there was no inquest that morning, and when I got back they told me that I wasn't wanted wherever they had the investigation.

Q. Now, you stated when you were asked if there was any other car between you and the defendants' car that you didn't believe that there was, and then you stated that there was no car in between unless it parked after the accident. A. If they had pulled ahead of the parked cars they would have had the chance to pull over against the curb out of the way.

Q. But you can't recollect as to whether there was any car between you and this Pennsylvania car that did that? A. No, I can't recall that they did that.

Q. You wouldn't swear as to whether there was a car between you and the Pennsylvania car? A. No, not now. If you had asked me next day I could have told you, but not now, whether there was a car in there or not.

Q. Now, in this statement that you gave to Mr. Cooney you said, among other things, that you were following this car, this defendants' car, which was later involved in
 175 the accident, and you were between 20 and 25 feet behind the car traveling on K Street between 15th and 16th Streets? A. Yes.

* * * * *
 176 Q. In this statement you signed for Mr. Cooney, didn't you say this, "The car that struck the woman stopped immediately. I should say it didn't move more than three feet after it struck her"? A. Perhaps it did. It would be foolish for me to say how far it did travel after it struck her.

Q. Anyway, it was going 20 to 30 miles an hour up to the crosswalk when the woman at that time was only five or six feet ahead of the car, and didn't slow up, and it hit her? A. She could have slowed up and cut her speed in half, at least, before she struck her.

Q. She could have? A. Yes.

Q. Did you see any evidence of her slowing up? A. No, but I know she did, or she would gone on further than
177 that if she hadn't.

Q. Did you hear any squealing of the tires? A. No.
Mr. Quinn: That is all.

Re-direct Examination

By Mr. Offutt:

Q. Now, this statement which Mr. Quinn was showing you, which I have had marked for identification purposes, Plaintiffs' Exhibit No. 11, is that your handwriting or Mr. John Cooney's handwriting, whose name appears on the back page? A. Mr. Cooney's handwriting.

Q. And when you learned he wanted you did you try to find his office? A. I did.

Q. Did you come to the Woodward Building to look for him? A. I did.

Q. Where are my offices located? A. They are on the sixth floor. I went up and asked what the name of the other lawyer was, and the secretary, she didn't know.

Q. What name were you looking for? A. Kelly, instead of Cooney.

178 Q. And did you go to the office? A. I made a mistake, not writing it down, and went to 306.

Q. Did you go to 306? A. And left my name with Mr. Franklin, to show I had been there.

Q. That was just day before yesterday? A. Yes.

Q. And the figures in here, are they in your handwriting?
A. No.

Q. And the phraseology; is that yours, or the way Mr. Cooney wanted to write it down? A. I answered his questions.

Q. And he wrote it down? A. He followed my answers as best he could, I suppose.

Q. But he didn't write it down in shorthand as you said it? A. No.

Q. Now, back on February 24, 1940, when this statement appears to have been signed, and after you had been interviewed by me some time previous to that, after the accident, was that fresher in your mind then than it was day before yesterday? A. Yes, it was much fresher.

179 Q. And at that time did you consider it was a fair statement? A. At that time I considered it to be a fair statement.

Q. I read you this statement, sir:

"There was a bus standing at the waiting zone, waiting for the light to change. This all happened very quickly, but I am sure that the woman was out in the crosswalk when the light changed from red to green."

Is that your testimony today?

A. That is my statement today, but I would rather take the statement.

Q. And that appears in the statement as of February 24, 1940? A. Yes.

Q. And the rest of the things that Mr. Quinn read to you, as they appear in the statement on February 24, 1940, were they your best recollection as of that time as written in the statement, and signed by you? A. They are my best recollection, as I remember the statement.

Q. Have you any interest in the outcome of this case one way or the other? A. No, sir, none whatever.

180 Q. And when Mr. Cooney wrote in that statement—by the way, Mr. Cooney worked for the Nichols Company there in the Woodward Building; is that where you went? A. I don't know who he worked for.

Q. And when he wrote in there about the speed of the car, the speed of the Pennsylvania car, and the speed in existence at the time, did he tell you what the speed limit was in the District of Columbia at that time? A. No, sir, he did not.

Q. Was there anything said by him about 22 or 25 miles an hour? A. We may have discussed the speed limit, and I think I did tell him it was between 22 and 25 miles an hour.

Q. If I told you that the speed limit was 25 miles an hour, would that refresh your recollection in any way? A. I know they changed it from 22 to 25, but how long ago I don't know.

Mr. Offutt: That is all. I have no further questions to ask this witness.

Mr. Quinn: Nothing further.

Mr. Offutt: May this witness be excused, if your Honor please?

The Court: Very well.

(Witness excused.)

* * * * *
Alfred L. Argo, was called as a witness for appellees, and testified as follows:

258 By Mr. Offutt:

Q. Will you state your full name, Officer, please? A. Alfred L. Argo.

Q. And are you a member of the Metropolitan Police Department? A. I am.

Q. And attached to what precinct? A. Now, the Traffic Division.

Q. And how long have you been attached to the Traffic Division? A. About a year and a half.

Q. How long have you been a member of the Metropolitan Police Department? A. Ten years in October.

Q. Officer Argo, in connection with an accident on April 24, 1939, did you investigate in connection with your duties,

the accident in which Mrs. Madeline Thecker was
 259 struck by a car, owned by Lou Orenberg and operated by Rita Homes? A. Yes, at 16th and K.

Q. And are you here today in answer to a subpoena duces tecum to produce the records of No. 3 precinct? A. Yes, sir.

Q. I show you now this incidental book of No. 3 Precinct. Is that the incidental you produced in connection with your subpoena? (Showing what book to witness.) A. Yes, sir.

Q. I show you incidental book, page 99, and ask you if that is the incidental book No. 7—28, page 99, is that the incidental report of this accident? A. Yes, sir; that is in my handwriting.

Q. As the result of your investigation? A. Yes, sir.

Q. In making an investigation of this kind, whom did you talk with in getting the information to supply and write that incidental? A. I made a routine investigation, when you arrive on the scene the first thing you try to find is the witnesses, disinterested witnesses. In this case we found several witnesses and talked to them at the scene, and, if I remember, we took the parties involved, that is, the driver
 of the car, to No. 3 Precinct, and Mrs. Thecker had
 260 been removed to the hospital in an ambulance, and we went to the hospital after we got the report, got a report as to her condition, as to what she was treated for?

Q. Was there a large crowd at 16th and K when you got there? A. Almost any accident will cause a congregation of people. I couldn't recall whether it was a large crowd, but it would attract attention and there would be people on the street.

Mr. Offutt: If your Honor please, I offer the incidental report of this accident.

Mr. Quinn: No objection.

By Mr. Offutt:

Q. Before I read it, did you talk to Miss Homes, the operator of the car? A. Yes.

Q. Was the owner of the car present? A. I believe the owner of the car was in the car at the time. I believe he was a passenger in the back of the car.

Q. Do you remember whether he was or not? A. No, sir. I don't recall definitely, but I believe he was, to the best of my recollection.

Q. Do you think you would recognize him today?

Mr. Orenberg, stand up, please.

261 Is that the owner of the car? A. Yes, I believe that he was with her.

Mr. Offutt: This is the incidental report on page 99:

"About 3:25 p.m. Madeline Thecker, white, female, 66 years, of 1716 34th Street, Northwest, while walking south across K Street, on the east curb of 16th Street, when about six feet from north safety island, was struck by a DeSoto sedan, Pennsylvania, registration, 920-U-6, owned by Lou Orenberg, 127 South Matlock Street, Westchester, Pennsylvania, operated west on K Street, from 10 to 15 miles per hour, by Rita Homes, white, 16 years, 10 months' experience, D. C. permit No. 414932.

"Injured taken to hospital in their ambulance, Dr. Gordon in charge. Treated for compound fracture left leg and a depressed fracture of skull. Admitted to hospital. Condition fair. Signed F. P. Martin and A. L. Argo."

By Mr. Offutt:

Q. You say that is in your handwriting? A. Yes, sir.

Q. Where did you get the information that the patient was treated for compound fracture of the left leg and a depressed fracture of the skull? A. From the emergency room. They have a card that is filled out by the doctor who does the examination and diagnosis, and we
262 got that from the hospital.

Q. And you brought these in this case? A. Yes.

Q. Did you make any measurements after you had arrived at the scene and saw where the woman who had been struck was lying on the street? A. Yes. I checked to the

accident schedule. I went there and got that sketch yesterday. I have a copy of it. I believe I couldn't recall it to my memory, but it shows on the sketch.

Q. Can you tell us how far west of the east curb her body was lying? A. She was struck at a point six feet north of the safety island, and her body was picked up sixteen feet of the west curb of 16th and K.

Q. Sixteen feet north of the north curb of the safety zone? A. Safety island I call it.

Q. Well, safety island. That would be north of this island six feet? A. That would be right.

Q. And do you have anything to show how far back from the corner of the curb— A. (Interposing) There is
263 a diagram that shows this as accurate as we could get it, the car was on the crosswalk, or just approaching the crosswalk.

Q. Just approaching the crosswalk or on the crosswalk. That would be the east side of the crosswalk? A. Yes, on the east curb of 16th Street; that is right.

Q. On the approaching side of the crosswalk? A. On the approaching side of the crosswalk, yes.

Q. And then the body you say was sixteen feet out beyond this curb line here (indicating)? A. Yes, sir.

Q. Sixteen feet out— A. (Interposing) Sixteen feet from the point of impact.

Q. What is that. A. Sixteen feet from the point of impact.

Q. Sixteen feet from the point of impact, or sixteen feet from the— A. (Interposing) From the point of impact.

Q. You testified first it was sixteen feet west of the east curb. A. That is inaccurate as far as feet and inches are concerned. That is as near as we could get it by the dirt and glass on the street, and the point that was pointed out to us as about where the body was picked up.

264 Q. Now, I notice you have some marks here. That is the feet mark? A. Yes, that is sixteen feet.

* * * * *

Rita Homes Niefeld, appellant, testified:

324 By Mr. Offutt:

Q. Will you state your name? A. Rita Homes Niefeld.

Q. And on the day of this accident, on April 24, 1939, your name was then Miss Rita Homes? A. That is right.

325 Q. How old were you then? A. Sixteen.

Q. And how old are you now? A. Twenty.

* * * * *

Q. And you were living in April 1939—April 24, where?

A. At the home of my parents 1701 Eastern Avenue, northeast.

Q. And whose car were you operating that day? A. My cousin's, Lou Orenberg.

Q. Is that the co-defendant here in this case? A. Yes.

* * * * *

326 Q. And were you operating the car with his permission? A. Yes, I was.

Q. And with his knowledge that day? A. I was.

Q. Who were in the car that day? A. My aunt and uncle, Mr. and Mrs. Orenberg, his father and mother.

Q. And now, how long had you been driving that car? A. It was close to a year. I think I got my permit in July of that same year. It would be a year the following July.

Q. And how long had Mr. Orenberg been in Washington? A. Well, I don't think it was very long. I don't think it was more than a month.

Q. And you had been driving that car about a year? A. No, I wasn't driving his car for a year. It was the first time I had driven his car.

Q. Didn't you understand the question. I asked you before how long you had been driving that car? A. I understood you to say, how long I had been driving.

Q. How long had you been driving that car? A. That car?

Q. Yes, before this accident? A. No, that was the first time I had driven that car.

Q. The first time you had driven it? A. Uhhuh.

Q. Where were you going in the car? A. I was taking my uncle to the doctor.

Q. Whereabouts? A. It was on Eye Street, I think between 18th and 19th; one of the medical buildings.

Q. Don't you know where? A. I say, between 18th and 19th—one of the medical buildings.

* * * * *

328 Q. How did you come to be driving your aunt and uncle there that day? A. Because I was the only one who knew how to drive, that could take him to the doctor.

Q. Was it something that came up that was very important to get him to the doctor? A. Yes, he had to go to the doctor.

Q. And that was the car that you were driving that was involved in the collision, wasn't it? A. It was.

* * * * *

369 Q. Did you go to the precinct with him? A. Yes.

* * * * *

370 Q. You testified before, I think, that you were 16 years old, when were you 16? A. I was 16 in July.

Q. July of 1938? A. Of 1939—no 1938.

Q. 1938, and at this time, that this accident happened, then, in 1939? A. I was going to be 17 that July.

Q. Shortly after your 16th birthday, you got a driver's permit that permitted you to drive your father's car, or your own car? A. Yes, his car.

* * * * *

Lou M. Orenberg, appellant, testified:

330 Direct Examination

By Mr. Offutt:

Q. State your full name? A. Lou M. Orenberg.

Q. What is the "M" for? A. Martin.

331 Q. And where do you live? A. Now?

Q. Yes, now. A. 1246 Queen Street, N. E.

Q. And where are you employed now? A. Capital Transit.

Q. And what do you do there? A. Drive a bus.

Q. How long have you been employed there? A. Around three years.

Q. Where were you living in 1939—April 1939? A. 1701 Eastern Avenue.

* * * * *

333 Q. What kind of a car was it, the one that was in the accident? A. That is a 1937 DeSoto.

Q. The same one that was in the accident? A. Yes.

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336 **Franklin Floyd Richardson**, called as a witness for appellants, testified as follows:

Q. How many feet? A. I couldn't say in feet. I imagine three or four feet.

337 Q. Now, was the bus at a standstill when the accident happened? A. Yes, sir.

Q. Prior to that time had you taken on any passengers? A. Yes, sir.

Q. How far is the bus stop located back from the corner of the island? A. I don't know; back about 8 or 10 feet, probably, from the end of that island there.

Q. Let me show you a picture there. Is there a bus stop marker there? A. Yes, sir. I don't know whether there was at the time but there is now.

Q. There is now? A. Yes, sir.

Mr. Offutt: I object to what is there now.

The Court: Objection sustained.

Mr. Quinn: They introduced the pictures showing where the bus stop was out there.

The Court: Not where the marked was, though.

The Witness: That was about twenty feet, and I was further beyond that.

338 By Mr. Quinn:

Q. Where the stop was, you were beyond it? A. Yes.

Q. Now, was there any other bus behind you that you recall? A. I don't believe there was one there at the time but there was one right after the accident.

* * * * *

342 Q. Did you take the name of anybody on the bus that day? A. I don't know whether I did or not. I don't believe I did.

* * * * *

350 Q. Don't you know which light was there then?

A. I don't even know now whether there is a light
351 here and here, or here (indicating). I was watching one of them. I know I was watching the green light to go.

Q. You were? A. Yes, traffic is moving this way all the time, and I was watching my chance to slip around here (indicating).

Q. You mean traffic was going through here while you were waiting? A. Yes.

Q. How much traffic was going through here while you were waiting? A. Oh, probably four or five automobiles, or more.

Q. Four or five automobiles went across 16th Street while you were waiting to go? A. Yes.

Q. And you had pulled up to the corner while the light was still red? A. Still red? I said it was green.

Q. What were you waiting for if you saw it was green? A. I had to wait for the cars to go by. I was watching for a chance to slip in.

Q. Were you standing still— A. (Interposing) Yes, I was waiting for a chance to slip in.

Q. Wait until I finish the question. Were you
352 standing still there while the light was red? A. The light was green.

Q. Let's go back to when it was red. A. It may have been red while I was picking up my passengers. I don't look for the light until I am ready to go.

Q. Was the light red at any time?

* * * * *

Q. You say the light over here was not red? A. I don't remember its being red.

Q. Can you give us your best recollection? Was it ever red, any time you looked toward it? A. No.

Q. You would say not, and any time you looked at it it was always green? There were four or five cars went
across? A. There may have been four or five and
353 may have been more.

Q. When Mr. Quinn asked you about the light on direct examination, you said, "I would go around on the yellow light as quick as I could",— A. If the green light had changed on the corner I would go around the corner as quick as I could.

Q. Just a minute. Let me finish my question.

The Court: He has explained what he said.

Mr. Offutt: Read the answer.

(Thereupon, the reporter read the answer referred to as follows:

"A. If the green light had changed on the corner I would go around the corner as quick as I could.")

Mr. Offutt: I hadn't asked a question.

Mr. Quinn: Mr. Offutt didn't like the answer.

By Mr. Offutt:

Q. Does the light go from red to amber, to green? A. No, it goes from green to amber, to red. But when the

light goes from red to green, you don't get an amber, but when the light changes from green to red, you get an amber.

* * * * *

354 Q. How long had you been running that bus? A.

I had been making that run for three years.

Q. Was there a light on that corner on April 24, 1939?

A. As regards the light, I wasn't looking at those lights.

Q. I see. So on or about that time you were operating in that section and knew that corner?

Did you see this lady when she left the curb? A. No.

Q. Did you see her when she was hit? A. No.

Q. What did you first see about the accident? When did you first know that there was an accident? A. When there was a scream.

Q. What did you see after that? Where was the woman?

A. The woman was lying in the street.

Q. So you didn't see the actual collision at all, did you?

A. No.

Q. Was your bus still back here (indicating)? A. Yes, it was still where the front end was when the woman screamed.

Q. You marked your bus in here (indicating). Is that where the woman was? A. At the time of the scream, yes; where I have drawn the front of the bus, that is
356 where it was.

Q. You have drawn a figure here, but that is not drawn to scale, but that is the whole bus? A. Yes; I am not much of an artist.

Q. You didn't come out? A. Because you have to pull out from the curb—

Q. (Interposing) But you didn't come out here—

Mr. Quinn: (Interposing) Let him finish. Because what?

The Witness: Because you have to pull out from the curb so you won't hit the tail end of the island.

By Mr. Offutt:

Q. How long had you been waiting at this corner? A. Four or five seconds.

Q. Did you take on any passengers? A. I took on some, but not after I pulled up.

Q. Was your door open? A. No.

Q. Do you know that it wasn't? A. I never drove a bus was an open door.

Q. Your bus was stopped? A. Yes, but I wouldn't.

Q. Do you know whether it was open or closed? A. It was closed.

* * * * *

357 Q. Now, I show you this picture here. Can you stand right here? Can you see it all right where you are? A. Yes, I can see it.

Q. If you will hold that steady; the whole bus was back here, you say, along here (indicating). Is that where you have it marked? A. By this taxicab.

Q. And the light over here was green? A. Yes.

Q. And you were looking over here at the traffic going through. A. You not only have to look this way (indicating) but this way too.

Q. Wait a minute, will you please? You were here watching traffic going across here, is that right? A. With one eye.

358 Q. With one eye? A. Yes.

Q. And you saw four cars go across there? A. Yes, sir, I saw some traffic.

Q. That is what you testified to. A. That is true.

Q. But you didn't see this woman walk out here? A. No, sir. I did not.

Q. And what were you watching with the other eye at that time? A. Your eyes move from side to side.

Q. I asked you what you were watching? A. I was probably watching my rear view mirror to see what was coming up behind.

Q. What about your fares that had just been put in the box? A. They were all in the bus.

Q. And there was a bus coming behind? A. But it wouldn't go through.

Q. Couldn't a bus come across here if you were here (indicating)? A. It could if traffic was moving here (indicating).

Q. When you said a bus couldn't come through here (indicating), what do you mean? A. I said they could come, coming the same direction.

359 Q. Was there any traffic moving here at that time?

A. Yes. There was a lot of traffic at that time of night, yes.

Q. Was there any traffic moving on the street at that time? A. Yes, there was traffic moving.

Q. What was your other eye watching? A. If this bus were to pull out, I would have to watch that, that something didn't hit him in the front wheel; he was driving, coming around this corner, and at the same time watching on this side your chance to sneak up 16th Street.

Q. Doing all those things? A. Yes, and if you don't think it is a job, try it some time.

Q. You had to do it that way. A. Yes.

Mr. Offutt: That is all.

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